167-196

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 202.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, PLAINTIFF IN ERROR,

vs.

ENOS H. NEBEKER.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 18, 1894.

(15,751.)

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1 In the Court of Appeals of the District of Columbia, September Term, 1893.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Appellant, *vs.* ENOS H. NEBEKER. } No. 250.

Supreme Court of the District of Columbia.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON *vs.* ENOS H. NEBEKER.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Declaration.

Filed September 16, 1891.

In the Supreme Court of the District of Columbia, the Fifteenth Day of September, 1891.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Plaintiff, *vs.* ENOS H. NEBEKER, Defendant. } At Law. No. 32064.

The plaintiff sues the defendant for that the plaintiff is a national banking association incorporated under the laws of the United States and located in the town of New Brighton, State of Minnesota, and the defendant is indebted to the plaintiff for money had and received by the defendant for the use of the plaintiff, and the plaintiff claims seventy-three and $\frac{8}{100}$ dollars, with interest from the twenty-fifth day of August, 1891, according to the particulars of demand hereto annexed.

JOHN J. CRAWFORD,
Attorney for Plaintiff.

2 *Notice to Plead.*

The defendant is to plead hereto on or before the first day of the special term of the court occurring twenty days after service hereof; otherwise judgment.

JOHN J. CRAWFORD,
Attorney for Plaintiff.

In the Supreme Court of the District of Columbia, the Fifteenth Day of September, 1891.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Plaintiff, *vs.* ENOS H. NEBEKER, Defendant. } At Law. No. —. Particulars of Demand.

This action is brought to recover the sum of seventy-three and $\frac{8}{100}$ dollars, paid by the plaintiff to the defendant on the 25th day of August, 1891, under protest, to procure the release of certain bonds, the property of the plaintiff, then illegally and wrongfully withheld by the defendant from the plaintiff.

JOHN J. CRAWFORD,
Attorney for Plaintiff.

Summons.

Issued the 16th day of September, 1891.

In the Supreme Court of the District of Columbia, the 16th Day of September, 1891.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Plaintiff, *vs.* ENOS H. NEBEKER, Defendant. } At Law. No. 32064.

The President of the United States to the defendant, Greeting:

You are hereby commanded to appear in this court on the first day of its special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness E. F. Bingham, chief justice.

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

J. J. CRAWFORD, *Attorney.*

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

3 *Marshal's Return.*

Served copies of the declaration, notice to plead, affidavit, and this summons on the defendant the 16th day of September, 1891.

D. M. RANSDELL, *Marshal.*

Plea.

Filed September 29, 1891.

In the Supreme Court of the District of Columbia.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON
vs.
ENOS H. NEBEKER. } At Law. No. 32064.

The defendant for plea says that he never was indebted as alleged.

CHAS. C. COLE,
Attorney of the United States in and for the District of Columbia, Attorney for Defendant.

Undertaking for Security for Costs.

Filed October 2, 1891.

In the Supreme Court of the District of Columbia, the 1st Day of October, 1891.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Plaintiff,
vs.
ENOS H. NEBEKER, Defendant. } No. 32064. At Law.

The plaintiff and Frederick W. Pratt, its surety, appear and, submitting to the jurisdiction of the court, hereby undertake for themselves and each of them, their and each of their heirs, executors, and administrators, to make good all costs and charges that the defendant may be put to in case the plaintiff is nonsuited or judgment be given against it, and they and each of them further agree that such judgment against the plaintiff may be rendered against all the parties whose names are hereto affixed.

FREDERICK W. PRATT.

Satisfactory as to surety.

H. T. TAGGART,
Ass't U. S. Att'y D. C.

Approved October 1st, 1891.

W. S. COX, *J.*

4 *Stipulation of Counsel.*

Filed January 29, 1892.

In the Supreme Court of the District of Columbia.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Plaintiff,
vs.
ENOS H. NEBEKER, Defendant. } At Law. No. 32064.

The parties hereto, by their respective attorneys, hereby stipulate that this action shall be tried by the court without a jury, and that the same may be brought on to be heard by either party upon five days' previous notice.

JOHN J. CRAWFORD,
Att'y for Plaintiff.
CHAS. C. COLE,
Att'y for Defendant.

Revocation of Stipulation.

Filed February 10, 1892.

In the Supreme Court of the District of Columbia.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Plaintiff,
vs.
ENOS H. NEBEKER, Defendant. } At Law. No. 32064.

The parties hereto, by their respective attorneys, hereby cancel and revoke the stipulation herein waiving a jury trial.

Dated Feb. 4, 1892.

JOHN J. CRAWFORD,
Att'y for Plaintiff.
CHAS. C. COLE,
Att'y for Defendant.

Replication.

Filed April 18, 1893.

In the Supreme Court of the District of Columbia, this 18th Day of April, 1893.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, MINN., Plaintiff,
vs.
ENOS H. NEBEKER, Defendant. } At Law. No. 32064.

The plaintiff joins issue upon the defendant's first plea.

JOHN J. CRAWFORD,
Att'y for Plaintiff.

5 *Judgment.*

Supreme Court of the District of Columbia, April Term, 1893.

Proceedings before the supreme court of the District of Columbia, holding a circuit court (division number one) and special term in and for said District, commencing the first Tuesday, it being the 4th day, of April, A. D. 1893.

* * * * * * *

SATURDAY, *May 20th*, 1893.

Session resumed pursuant to adjournment, Bradley, justice, presiding.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Plaintiff, *vs.* ENOS H. NEBEKER, Defendant. } At Law. No. 32064.

Now comes here as well the plaintiff, by its attorney, Mr. J. J. Crawford, as the defendant, by his attorney, Mr. A. A. Birney, and a jury of good and lawful men of this District, to wit, Howard Bond, Charles A. Payne, Simon Burnett, Oscar N. Brown, Uriah D. Hilton, Algernon McChesney, Warner H. Wright, James Fullalove, Benjamin P. Davis, Columbus Eslin, Conrad Roeben, and William Huddleston, who, being duly sworn to try the issue above joined, after the case is given them in charge, on their oath say they find said issue in favor of the defendant; therefore it is considered that the plaintiff take nothing by its suit, and that the defendant go thereof without day and recover against the plaintiff the costs of his defense, to be taxed by the clerk, and have execution thereof.

Motion for a New Trial.

Filed May 25th, 1893.

In the Supreme Court of the District of Columbia, May 25th, 1893.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, MINN., Plaintiff, *vs.* ENOS H. NEBEKER, Defendant. } At Law. No. 32064, Doc. 36.

Now comes the plaintiff, by John J. Crawford, its attorney, and moves the court to set aside the verdict and judgment in the above-entitled action and grant a new trial upon the grounds following, viz:

1. That the verdict is contrary to the evidence produced at the trial.

2. On bills of exceptions taken during the trial to the rulings of the justice presiding in instructing and refusing to instruct the jury.

6 3. That the court erred in instructing the jury to find for the defendant upon the case shown.

JOHN J. CRAWFORD,
Att'y for Plaintiff,
Per THOMAS L. WATERS.

To A. A. Birney, Esq., United States district attorney, Washington, D. C.

SIR: Please take notice that on Saturday, May 27th, 1893, at 10 o'clock a. m., or as soon thereafter as a hearing can — obtained, I will move the court to grant a new trial in the above-entitled action upon the grounds specified in the motion above written.

JOHN J. CRAWFORD,
Att'y for Plaintiff,
Per THOMAS L. WATERS.

SATURDAY, *May 27th, A. D.* 1893.

Session resumed pursuant to adjournment, Bradley, justice, presiding.

* * * * * * *

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Plaintiff,
vs.
ENOS H. NEBEKER, Defendant. } At Law. No. 32064.

Upon hearing the plaintiff's motion for a new trial, it is considered that said motion be, and the same is hereby, overruled.

Appeal.

Filed June 9, 1893.

In the Supreme Court of the District of Columbia, this 9th Day of June, 1893.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, MINN.,
vs.
ENOS H. NEBEKER. } At Law. 32064, Dock. 36.

Comes now the plaintiff, by its attorney, and appeals as well from the judgment of the supreme court of the District of Columbia, entered in the above-entitled action on the 20th day of May, 1893, as from the further order & judgment of said court, rendered on the 27th day of May, 1893, overruling said plaintiff's motion for a new trial on bills of exceptions herein filed.

JOHN J. CRAWFORD,
Attorney for Pl'tf,
Per THOMAS L. WATERS.

7 *Order for Citation.*

Filed June 10, 1893.

In the Supreme Court of the District of Columbia, the 10th Day of June, 1893.

THE TWIN CITY NAT. BANK
vs.
ENOS H. NEBEKER. } Precipe. At Law. No. 32064.

The clerk of said court will please issue a citation to the Court of Appeals of the District of Columbia upon appeal of the plaintiff, noted on the 9th day of June, 1893.

JOHN J. CRAWFORD,
Attorney for Plaintiff,
Per THOMAS L. WATERS.

In the Supreme Court of the District of Columbia.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON
vs.
ENOS H. NEBEKER. } At Law. No. 32064.

The President of the United States to Enos H. Nebeker, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, on the 4th day of September, A. D. 1893, pursuant to an appeal filed in the clerk's office, supreme court of the District of Columbia, on the 9th day of June, 1893, wherein The Twin City National Bank of New Brighton is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 10th day of June, in the year of our Lord one thousand eight hundred and ninety-three.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 12 day of June, 1893.
A. A. BIRNEY,
Attorney for Appellee.

(Endorsed:) No. 32064. Law. Twin City National Bank of New Brighton *vs.* Enos H. Nebeker. Citation issued June 10th, 1893. Served cop- of the within citation on —— ——. —— ——, marshal. John J. Crawford, attorney for appellant.

8 *Appeal Bond.*

Filed June 13, 1893.

In the Supreme Court of the District of Columbia, the 12th Day of June, 1893.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON
vs.
ENOS H. NEBEKER. } No. 32064.

Know all men by these presents that we, The Twin City National Bank of New Brighton and Frederick W. Pratt, are bound unto the above-named Enos H. Nebeker in the sum of five hundred dollars, to be paid to the said Enos H. Nebeker, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 12th day of June, 1893.

Whereas the above-named Twin City National Bank of New Brighton has prosecuted — to the Court of Appeals of the District of Columbia to reverse the judgment and the order denying a new trial rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is such that if the above-named Twin City National Bank of New Brighton shall prosecute the said appeal to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE TWIN CITY NATIONAL BANK,
By A. S. PRATT & SONS, *Att'ys.* [SEAL.]
FREDERICK W. PRATT. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved the 13th day of June, 1893.
E. F. BINGHAM,
Chief Justice S. C. D. C.

Bill of Exceptions.

Filed June 30, 1893.

In the Supreme Court of the District of Columbia.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON
against
ENOS H. NEBEKER. } At Law. No. 32064.

SIR: Please take notice that the annexed is a copy of the proposed bill of exceptions of the plaintiff herein, and that the

9 same will be presented for settlement to Hon. Andrew C. Bradley, the justice who tried the cause, at ——, on the 29th day of June, 1893.

Dated June 24th, 1893.

JOHN J. CRAWFORD,
Attorney for Plaintiff.

To Hon. A. A. Birney, District attorney, attorney for defendant.

In the Supreme Court of the District of Columbia.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON
against
ENOS H. NEBEKER.
} At Law. No. 32064.

The issues in this cause came on to be heard before Hon. Andrew C. Bradley, one of the justices of this court, at a circuit, on the 20th day of May, 1893. The plaintiff appeared by John J. Crawford, Esq., its counsel, and the defendant by A. A. Birney, his counsel. Thereupon a jury was regularly empannelled and sworn. The plaintiff, by its counsel, opened the case to the jury.

The plaintiff then, to maintain the issues upon its part, put in evidence a copy of the organization certificate of the plaintiff as a national banking association, which copy was certified to be a correct copy of the original on file in the office of the Comptroller of the Currency by James H. Eckels, Comptroller of the Currency, and authenticated by his seal of office.

The plaintiff then put in evidence a copy of a certificate dated August 17, 1891, made by Walter N. Carroll, cashier of the plaintiff, under the seal of the plaintiff, certifying to the Comptroller of the Currency that at a meeting of the stockholders of the plaintiff, duly notified and held pursuant to law and the articles of association of the plaintiff, at the office of the plaintiff at New Brighton, in the State of Minnesota, on the 13th day of June, 1891, it was voted by the shareholders of the plaintiff owning more than two-thirds of the stock that the plaintiff go into liquidation on June 23, 1891, and be closed; which copy was certified by James H. Eckels, Comptroller of the Currency, under his hand and official seal, to be a true and complete copy of the original certificate of liquidation of the plaintiff on file in his office.

The plaintiff then put in evidence a copy of a power of attorney made by the plaintiff, through its board of directors, authorizing the Comptroller of the Currency to withdraw twelve thousand five hundred dollars of U. S. bonds deposited with the Treasurer of the United States by the plaintiff to secure circulation, and authorizing A. S. Pratt & Sons to sell, assign, and transfer the same, and appoint one or more attorneys for that purpose, which copy was certified by James H. Eckels, Comptroller of the Currency, under
10 his hand and official seal, to be a true and complete copy of the original power of attorney to withdraw and assign the bonds of the plaintiff.

The plaintiff then called as a witness THOMAS E. ROGERS, who testified that he was the superintendent of the national bank redemption agency in the office of the Treasurer of the United States and held such position during the year 1891. The witness produced from the office of the Treasurer the return made by the plaintiff of the average amount of its notes in circulation for the period from June 1, 1891, to June 30, 1891.

The paper was offered and admitted in evidence and was marked Exhibit D and is in the words and figures following:

EXHIBIT D.

Semi-annual Return of Circulation Subject to Duty.

Return of the average amount of notes of the Twin City National Bank of New Brighton, State of Minnesota, in circulation for the six months next preceding the first day of July, 1891, with the duty thereon, made pursuant to the provisions of section 5215, Revised Statutes of the United States, in order to enable the Treasurer of the United States to assess the duty on circulation imposed by section 5214 of said statutes as amended by section of "An act to reduce internal-revenue taxation, and for other purposes," approved March 3, 1883.

Amount of circulating notes received from the Comptroller of the Currency.....	$11,250	
Average amount of notes in circulation..... ..	11,250	
Duty on average amount at one-half of one per cent.....		$56 25

I, Walter N. Carroll, cashier of the above-named national bank, do solemnly swear that the above is a true statement of the average amount of the notes of said bank in circulation for the time named.

WALTER N. CARROLL.

Subscribed and sworn to before me this 1st day of July, 1891.

[SEAL.] BOYD S. LEIPART,
Notary Public.

The witness then produced from the office of the Treasurer the return made by the plaintiff of the average amount of its notes in circulation for the period from July 1 to August 25, 1891.

The paper was offered and admitted in evidence and marked Exhibit E and is in the words and figures following:

11 EXHIBIT E.

Semi-annual Return of Circulation Subject to Duty.

Return of the average amount of notes of the Twin City National Bank of New Brighton, State of Minnesota, in circulation for the 53 days next preceding the 22nd day of August, 1891, with the duty thereon, made pursuant to the provisions of section 5215, Revised Statutes of the United States, in order to enable the Treasurer of the United States to assess the duty on circulation imposed by section 5214 of said statutes, as amended by section 1 of "An act to reduce internal-revenue taxation, and for other purposes," approved March 3, 1893.

Amount of circulating notes received from the Comptroller of the Currency	$11,250	
Average amount of notes in circulation	11,250	
Duty on average amount at one-half of one per cent		$15 93
		90
		16 83

I, Walter N. Carroll, cashier of the above-named national bank, do solemnly swear that the above is a true statement of the average amount of the notes of said bank in circulation for the time named.

WALTER N. CARROLL.

Subscribed and sworn to before me this 20th day of August, 1891.

[SEAL.] FRED'K S. FOX,
Notary Public.

The witness then produced from the office of the Treasurer a letter from the attorneys of the plaintiff to the Treasurer, which was offered and admitted in evidence, and marked Exhibit F, and which is in the words and figures following:

EXHIBIT F.

A. S. Pratt & Sons, national-bank attorneys, the Sun building, publishers of Pratt's Digest of National Bank Laws, $2; Pratt's Manual of General Banking Law, $1.50; "How to Organize a National Bank," 25 cents; The Bankers' Eclectic (Monthly), $2.

WASHINGTON, D. C., *Aug. 25th*, 1891.

SIR: We hand you herewith $11,250, U. S. notes, to retire the outstanding circulation of the Twin City National Bank of

12 New Brighton, Minnesota (charter No. 4302), now in voluntary liquidation.

Very respectfully, A. S. PRATT & SONS.

To the Hon. Treasurer of the U. S.

Deposited as directed Aug. 25, 1891. W., for ass't treasurer U. S. Charge receiving teller, Aug. 25, 1891, $11,250. Smith, cct'g R. T. F. W. L.

Endorsed: P. 1209. (Copy.) Pratt & Sons, A. S., Washington, D. C., Aug. 25, '91. Encs. to retire circ'l'n of Twin City N. B. of New Brighton, Minn., U. S. notes, $11,250. Received Aug. 25, 1891, for file. D., cash.

The witness then produced from the office of the Treasurer a notice from the attorneys of the plaintiff, which was offered and admitted in evidence and marked Exhibit G, and which was in the words and figures following:

EXHIBIT G.

DEAR SIR: Please take notice that in making return of the average amount of its notes in circulation for the six months immediately preceding the first day of July, 1891, and in paying the tax assessed thereupon the Twin City National Bank of New Brighton, Minnesota, does not intend to admit the validity of such tax or your authority to exact or collect the same, but makes such return and payment solely for the purpose of procuring the possession of the United States bonds belonging to said bank, which you have refused to release until such return and payment made; and the said bank protests that it is not liable to said tax or any part thereof, and that your action in the premises is wholly illegal and without authority of law, and the said bank will take such action to recover the money so paid as it may be advised.

A. S. PRATT & SONS,
Att'ys for Twin City Nat'l Bank.

Dated August 25, 1891.
To Hon. E. H. Nebeker, Treasurer.

The witness then produced from the office of the Treasurer a notice from the attorneys of the plaintiff, which was offered and admitted in evidence and marked Exhibit H, and which is in the words and figures following:

EXHIBIT H.

DEAR SIR: Please take notice that in making return of the average amount of its notes in circulation for the period from July 1, 1891, to August 25th, 1891, and in paying the tax assessed thereupon the Twin City National Bank of New Brighton, Min-
13 nesota, does not intend to admit the validity of such tax or your authority to exact or collect the same, but makes such

return and payment solely for the purpose of procuring the possession of the United States bonds belonging to the said bank, which you have refused to release until such return and payment made; and the said bank protests that it is not liable to said tax or any part thereof, and that your action in the premises is wholly illegal and without authority of law, and the said bank will take such action to recover the money so paid as it may be advised.

A. S. PRATT & SONS,
Att'ys for Twin City Nat'l Bank.

Dated August 25, 1891.
To Hon. E. H. Nebeker, Treasurer.

Upon cross-examination the witness produced a printed copy of instructions issued by the Treasurer of the United States to national banks for making return and payment of semi-annual tax. The paper was put in evidence by the defendant and was marked Exhibit I, and is in the words and figures following:

Instructions for Making Return and Payment of Semi-annual Duty.

1. By section 5215, Revised Statutes, it is made the duty of the Treasurer of the United States to prescribe the form for making return by each national bank of the average amount of its notes in circulation for each half year.

2. This return, with each blank filled with the proper amount, as indicated, and subscribed and sworn to by the president or cashier of the bank before an officer qualified to administer oaths, must be sent to the Treasurer of the United States within ten days from the first days of January and July respectively in each year, under a penalty of two hundred dollars, and payment must be made within the months of January and July.

3. Payment may be made by deposit of the amount of duty to the credit of the Treasurer of the United States, with him or with any assistant treasurer or national-bank depositary. Triplicate certificates should be issued therefor, the "original" of which must be forwarded to the Secretary of the Treasury, the "duplicate" to the Treasurer, and the "triplicate" held by the bank making the deposit as its voucher therefor. No other receipt will be issued. The certificate must state that the deposit is on account of semi-annual duty.

4. If there is no depositary convenient, payment may be made by draft on New York (collectible through the clearing-house) to the order of the Treasurer, or by remittance to him in lawful money of the United States or notes of national banks, for which the Treasurer will issue his certificate of deposit and send the duplicate to the bank. Drafts on other cities than New York cannot be received.

5. The duty on circulating notes is one-half of one per centum on the average amount outstanding for the six months.

14 6. Liability begins on the first days of January and July in each year, unless a bank had at that time no circulation

outstanding, in which case it begins with the date of the first issue of notes and terminates on the 30th day of June or the 31st day of December (as the case may be), date of commencement and termination both included.

7. Banks that have heretofore made returns will report for the full semi-annual term of 181, 182, or 184 days, as the case may be, and banks that have not heretofore made returns will report their circulating notes from and including the date of their first issue.

8. To ascertain the average amount, add together the daily balances of the notes in circulation from the proper date of the commencement of the liability to duty (including for each Sunday and holiday the balance of the preceding business day) to and including the 30th day of June or the 31st day of December, as the case may be. The aggregate of daily balances for the first six months of any year will be divided by 181—the number of days from January 1 to June 30, except in leap year, when the sum will be divided by 182. The aggregate of daily balances for the last six months of any year will be divided by 184—the number of days from July 1 to December 31.

9. Banks not making daily statements and obtaining their averages from weekly statements should add together the weekly balances, including for each day in any fractional part of a week one-seventh of the weekly balance next preceding such fractional part. The aggregate of balances for the first six months of any year will be divided by the number of weeks from January 1 to June 30th ($25\frac{6}{7}$ or 26, as the case may be). The aggregate of balances for the last six months will be divided by $26\frac{2}{7}$—the number of weeks from July 1 to December 31.

10. Banks having circulation subject to duty for a period less than half a year, which make their estimates from daily balances, will divide the aggregate of the balances of the item for the time for which it is liable to duty by the number of days in the half year; and banks which make their estimates from weekly balances, by the number of weeks and the fractions thereof in the half year. The quotient thus found will be the average amount subject to duty for each six months respectively, and should be entered in the return, and duty computed thereon at the full semi-annual rate.

11. A bank retiring its circulation or any portion of it is relieved from duty on the amount retired from the time of making the deposit of lawful money to redeem the same.

12. A bank which has gone into liquidation in making its final return must estimate duty upon circulation to the time of making the deposit of lawful money with the Treasurer U. S. to redeem the same. The item should be averaged for the full six months, according to the foregoing rule, and the duty calculated at the prescribed rate. The amount thus determined is the correct proportion for the time for which the item is liable.

15 The witness testified that the regulations contained in Exhibit I were in force in 1891, and at the time of the protests made by the attorneys of the plaintiff, and that during

said year 1891, and at the time of the protests made by the attorneys for the plaintiff, the defendant was Treasurer of the United States.

The plaintiff then called as a witness FREDERICK PRATT, who testified that he was a member of the firm of A. S. Pratt & Sons, and that his firm were the agents of the plaintiff during the year 1891. On August 25, 1891, witness deposited for the plaintiff in the Treasury of the United States eleven thousand two hundred and fifty dollars for the purpose of withdrawing the bonds of the plaintiff on deposit with the Treasurer. Witness deposited the money in the cash-room in the Treasury, with the receiving teller, who noted it on the letter of transmittal. The witness identified Exhibit F as the letter of transmittal written by his firm. The stamp thereon, "Charge receiving teller, Aug. 25, 1891, $11,250. Smith, act'g, R. T.," was placed thereon in the Treasurer's office, when witness paid the money into the Treasury. This witness further testified as follows:

Q. After you had paid this money into the Treasury what did you do?

A. I went to the Treasurer of the United States and showed him that I had made the deposit and demanded the surrender of the bonds. He declined to give them up.

Q. That was Mr. Nebeker, the defendant here?

A. Yes; he declined to give them up unless the semi-annual return be made and a deposit made of the amount required, $56.25. I then submitted the return and handed him the money with it, at the same time filing the protest.

Q. You called his attention, did you not, particularly to the fact that you protested that he had no right to the payment of the money?

A. That he had no right to demand the tax.

Q. For what period was the return first to be made?

A. For the period from January 1st to June 30th, 1891.

Q. And then, when he told you that you could not withdraw the bonds until the return was made and the tax paid, did you deliver to him the paper marked Exhibit D?

A. I delivered to him the paper marked Exhibit D.

Q. And did you at the same time deliver to him the protest which has been put in evidence and marked Exhibit G?

A. Yes.

Q. And then you paid to him personally how much money?

A. $56.25.

Q. Did you pay that to him individually?

A. I paid it right in his room, on his desk.

Q. You gave it to him?

A. Yes.

Q. Then what did you do?

A. Then, he having refused to deliver the bond, I made the return.

16 Q. Did you make a demand upon him for the bonds then?
A. Yes.
Q. Another demand?
A. Yes; he declined to surrender them.
Q. Then what did he do?
A. He then said that a return must be made for the remaining period.
Q. For what period?
A. From July 1st to August 25th, 1891.
Q. Then did you deliver to him the return marked Exhibit E?
A. Yes; and I paid him sixteen dollars and eighty-three cents, and also filed a protest.
Q. Did you file a protest with him that the bank was not liable for that tax?
A. Yes.
Q. Did you file with him any written protest?
A. Yes.
Q. Is the paper marked Exhibit H the protest that you filed with him at that time?
A. Yes.
Q. To whom did this money belong that you paid to Mr. Nebeker on account of that tax?
A. The Twin City National bank sent us that money.
Q. Did the defendant assign any other reason for refusing to deliver to you the bonds other than he wanted a return of the average amount of circulating notes and tax paid?
A. No.
Q. After you had paid that tax did he permit you to withdraw the bonds?
A. Yes.

Counsel for the plaintiff then stated that he wished to offer in evidence the Journals of the House of Representatives and the Senate of the United States for the first session of the 38th Congress, from which Journals it would appear that the national bank act originated as a bill in the House of Representatives, and that when it passed the House of Representatives it contained no provision for a tax upon the national banks, or a tax upon any corporation or upon any individual or upon any property, nor contained any provisions whatever for raising revenue, and that all the provisions in the Revised Statutes of the United States which appear to authorize the Treasurer of the United States to collect any tax on the circulating notes of national banks originated in the Senate by way of amendment to a House bill which contained no provisions whatever for any tax or for raising revenue, and was passed by the concurrence of the House in that amendment.

The Journals of the House and Senate for the first session of the 38th Congress were then offered in evidence by the plaintiff and were received in evidence by the court.

The following are the entries which appear in the said Journal of

the House of Representatives in reference to House bill No.
17 395, "To provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof."

April 11, 1864.—Mr. Hooper, on leave, introduced a bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, and further consideration is postponed until Saturday next, after the morning hour.

April 16, 1864.—The Speaker having announced as the business next in order the bill of the House (H. R. 395), to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, heretofore introduced by Mr. Hooper, and its further consideration postponed until this day—

Mr. Holman made the point of order that the said bill must receive its first consideration in Committee of the Whole House on the State of the Union on the ground that it imposed a tax and also made an appropriation.

The Speaker overruled the said point of order on the ground that it contained no appropriation, nor did it impose a tax upon the people, such as was contemplated by the rule.

From this decision of the chair Mr. Holman appealed; and the question being put, Shall the decision of the chair stand as the judgment of the House?

It was decided in the affirmative { Yeas, 71. Nays, 31.

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the decision of the chair was sustained.

Mr. Fernando Wood also made the point of order that the bill must be first considered in Committee of the Whole, because it created new offices and affixed salaries to the same, and thereby created a charge upon the people.

The Speaker overruled the said point of order on the ground that the salaries created by the bill must be appropriated for by another bill, and that no appropriation is made therefor by the present bill.

From this decision of the chair Mr. Wood appealed.

And the question being put, Shall the decision of the chair stand as the judgment of the House?

It was decided in the affirmative { Yeas, 85. Nays, 9.

The yeas and nays being desired by one-fifth of the members present.

18 Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the decision of the chair was sustained.

Mr. Holman having proposed to renew the point of order just made on the suggestion that other sections of the bill than those already referred to contained an appropriation,

The Speaker decided that the said point of order could not be renewed, on the ground that such a practice would open the door to an indefinite number of appeals, and he referred to a decision in the 32nd Congress in confirmation of his decision.

From this decision of the chair Mr. Holman appealed.

And the question being put, Shall the decision of the chair stand as the judgment of the House?

It was decided in the affirmative.

So the decision was sustained.

The House then proceeding to the consideration of the said bill (H. R. 395),

Pending the question on its engrossment,

After debate,

Mr. Hooper submitted an amendment thereto;

Pending which,

Mr. Hooper moved the previous question, and the House refused to second the same.

Mr. Fenton then moved the previous question on the said amendment.

The question then recurring on the demand for the previous question, it was seconded and the main question ordered, and under the operation thereof the said amendment was agreed to.

Mr. Fenton submitted the following amendment, viz: Strike out all after line 9 to the end of section 41, and insert in lieu thereof; 'And nothing in this act shall be construed to prevent the taxation by States of the capital stock of banks organized under this act, the same as the property of other moneyed corporations, for State or municipal purposes, but no State shall impose any tax upon such associations or their capital, circulation, dividends, or business at a higher rate of taxation than shall be imposed by such State upon the same amount of money capital in the hands of individual citizens of such State: Provided, that no tax shall be imposed on any part of the capital stock of such association invested in the bonds of the United States deposited as security for its circulation."

The same having been read,

Mr. Fenton moved the previous question thereon, which was seconded and the main question ordered and put, viz:

19 Will the House agree to the said amendment?

And it was decided in the affirmative { Yeas, 70. Nays, 60.

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the amendment was agreed to.

The question then recurring on the engrossment of the bill,

Mr. Hooper moved the previous question, which was seconded and the main question ordered to be put.

The question was then put, Shall the bill be engrossed and read a third time?

And it was decided in the affirmative.

April 18, 1864.—The Speaker then announced as the business in order the bill of the House (H. R. 395), to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, which was ordered to be engrossed and read a third time under the operation of the previous question, just previous to the adjournment of the House on Saturday last.

The said bill being engrossed, was accordingly read the third time.

The question then being on its passage,

Mr. Hooper moved the previous question;

Pending which,

Mr. Brooks moved a reconsideration of the vote on the engrossment of the bill;

Pending which,

Mr. Edward H. Rollins moved that the motion to reconsider be laid on the table,

And the question being put,

It was decided in the affirmative { Yeas, 75. Nays, 66.

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the motion to reconsider was laid on the table.

The question then recurring on the demand for the previous question,

20 Mr. Holman moved that the bill be laid on the table.

And the question being put,

It was decided in the negative { Yeas, 59. / Nays, 76.

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the House refused to lay the bill on the table.

The question again recurring on the demand for the previous question, it was seconded and the main question ordered and put, viz., Shall the bill pass?

And it was decided in the affirmative { Yeas, 80. / Nays, 66.

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the bill was passed.

Mr. Hooper moved that the vote last taken be reconsidered, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

Ordered, that the clerk request the concurrence of the Senate in the said bill.

May 11, 1864.—A message from the Senate by Mr. Forney, their secretary.

Mr. Speaker, the Senate have passed a bill of this House of the following title, viz., H. R. 395, An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, with amendments, in which I am directed to ask the concurrence of this House.

May 17, 1864.—On motion of Mr. Ganson, by unanimous consent—

Ordered, that the amendments of the Senate to the bill of the House (H. R. 395), to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, be printed.

21 May 23, 1864.—The bill of the House (H. R. 395), to provide a national currency secured by a pledge of United States

bonds, and to provide for the circulation and redemption thereof, with the amendments of the Senate thereto, having been taken up,

On motion of Mr. Cox, at 4 o'clock and 20 minutes p. m., the House adjourned.

May 24, 1864.—The House resumed, as the regular order of business, the consideration of the amendments of the Senate to the bill of the House (H. R. 395), to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, which was pending when the House adjourned yesterday.

When Mr. Hooper moved the previous question, which was seconded and the main question ordered put,

Mr. Holman moved that the bill and amendments be laid on the table.

And the question being put,

It was decided in the negative { Yeas, 56. Nays, 80.

The yeas and nays being desired by one fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the House refused to lay the bill and amendments on the table.

The amendments of the Senate numbered 1 and 2 having been severally read and agreed to,

Mr. James S. Brown moved a reconsideration of the vote by which the first amendment was agreed to;

Pending which,

On motion of Mr. Webster,

Ordered, that the motion to reconsider be laid on the table.

Mr. Holman moved a reconsideration of the vote by which the second amendment was agreed to;

Pending which,

On motion of Mr. Farnsworth,

Ordered, that the motion to reconsider be laid on the table.

The amendments numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, and 18 were severally agreed to, and the amendment numbered 15 was disagreed to.

The 19th amendment having been read as follows, viz:

In section 22, line 2, after the word "issued" insert the
22 words "or the amount of capital stock of the association organized,"

The question was put, Will the House agree thereto?

And it was decided in the negative { Yeas, 57. Nays, 71.

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the 19th amendment was disagreed to.

The amendments numbered 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33 were severally read and agreed to.

The 34th amendment having been read as follows, viz:

In section 30, lines 4 and 5, strike out the words "a rate not exceeding seven per centum per annum" and insert in lieu thereof the words "the rate allowed by the laws of the State or Territory where the bank is located and no more, except that where, by the laws of any State, a different rate is limited for banks of issue organized under State laws, the rate so limited shall be allowed for associations organized in any such State under this act; and when no rate is fixed by the laws of the State or Territory the bank may take, receive or charge a rate not exceeding seven per centum,"

The question was put, Will the House agree thereto?

And it was decided in the affirmative { Yeas, 66. Nays, 52.

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the 34th amendment was agreed to.

Mr. Eldridge moved that the bill and amendments be laid on the table.

And the question being put,

It was decided in the negative { Yeas, 55. Nays, 72.

The yeas and nays being desired by one-fifth of the members present.

23 Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the House refused to lay the bill and amendments on the table.

The amendments numbered 35, 39, and 40 were severally agreed to, and the amendments numbered 36, 37, and 38 were severally disagreed to.

The 41st amendment having been read as follows, viz:

In section 41 strike out the following words: "And nothing in this act shall be construed to prevent the taxation by States of the capital stock of banks organized under this act, the same as the property of other moneyed corporations, for State or municipal purposes; but no State shall impose any tax upon such associations or their capital, circulation, dividends, or business at a higher rate of taxation than shall be imposed by such State upon the same amount of moneyed capital in the hands of individual citizens of such State: Provided, that no State tax shall be imposed on any part of the capital stock of such association invested in the bonds of the United States deposited as security for its circulation," and in lieu thereof insert the following words, viz: And in lieu of all existing taxes every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum each half year from and after the first day of January, eighteen hundred and sixty-four, upon the average amount of its notes in circulation, and a duty of one-quarter of one per centum each half year upon the average amount of its deposits, and a duty of one-quarter of one per centum each half year, as aforesaid, on the average amount of its capital stock beyond the amount invested in United States bonds; and in case of default in the payment thereof by any association, the duties aforesaid may be collected in the manner provided for the collection of United States duties of other corporations, or the Treasurer may reserve the amount of said duties out of the interest as it may become due on the bonds deposited with him by such defaulting association. And it shall be the duty of each association within ten days from the first days of January and July of each year to make a return under the oath of its president or cashier to the Treasurer of the United States, in such form as he may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and of the average amount of its capital stock beyond the amount invested in United States bonds for the six months next preceding said first days of January and July as aforesaid, and in default of such return and for each default thereof each defaulting association shall forfeit and pay to the United States the sum of two hundred dollars, to be collected either out of the interest
24 as it may become due such association on the bonds deposited with the Treasurer or at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States; and in case of such default the amount of the duties to be paid by such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency, and upon the highest amount of its deposits and capital stock, to be ascertained in such manner as the Treasurer may deem best: Provided, that nothing in this act shall be construed to

prevent the market value of the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of all taxes imposed by or under State authority, for State, county, or municipal purposes, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State. And all the remedies provided by State laws for the collection of such taxes shall be applicable thereto: Provided, further, that no tax shall be imposed under the laws of any State, upon the shares in any of the associations authorized by this act, at a rate exceeding that imposed upon the shares in banks organized under authority of the State where such association is located: Provided, also, that nothing in this act shall exempt the real estate of associations from either State, county, or municipal taxes to the same extent, according to its value, as other real estate is taxed.

And the question being put, Will the House agree thereto?

It was decided in the negative { Yeas, 61. Nays, 67.

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the 41st amendment was agreed to.

The amendments from the Senate numbered from 42 to 54, both inclusive, were severally read and agreed to.

Mr. Hooper moved that the several votes on the said amendments be reconsidered, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

On motion of Mr. Hooper,

Ordered, that the House request a conference with the Senate on the disagreeing votes of the two houses on the said bill.

Ordered, that Mr. Hooper, Mr. Elihu B. Washburne, and Mr. Mallory by the managers at the said conference on the part of the House.

Ordered, that the clerk acquaint the Senate therewith.

25 May 25, 1864.—A message from the Senate by Mr. Hickey, their chief clerk.

Mr. Speaker, the Senate insists upon their amendments, disagreed to by the House, to the bill of the House (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, agree to the conference asked by the House on the disagreeing votes of the two

houses thereon, and have appointed Mr. Sherman, Mr. Foster, and Mr. Johnson the committee of conference on the part of the Senate.

June 1, 1864.—The Senate have agreed to the report of the committee of conference on the disagreeing votes of the two houses on the bill of the House (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof.

Mr. Hooper, from the committee of conference on the disagreeing votes of the two houses on the amendments to the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, having met, after full and free conference, have agreed to recommend and do recommend to their respective houses as follows, viz:

That the House of Representatives recede from their disagreement to the 15th amendment of the Senate and agree to the same with an amendment as follows: Line 2 of said amendment, strike out the words "the bonds" and insert in lieu thereof the following words: Any excess of bonds beyond one-third of its capital stock, and the Senate agree to the same.

That the Senate recede from their nineteenth amendment.

That the House of Representatives recede from their disagreement to the 36th amendment of the Senate and agree to the same.

That the House recede from their disagreement to so much of the 37th amendment of the Senate as proposes to insert the words "Buffalo and Providence, Rhode Island," and agree to the same with an amendment as follows: Strike out the words proposed to be inserted by said Senate amendment and in lieu thereof — the words Washington city, and the Senate agree to the same.

That the House recede from their disagreement to the 38th amendment of the Senate and agree to the same with the following amendments: Strike out all after the word "notes," in line 7 of the matter proposed to be inserted by said Senate amendment, down to and including the word "mountain," in line 10, and in line 12 strike out the words "three-fifths" and insert in lieu thereof the words "one-half," and the Senate agree to the same.

That the House recede from their disagreement to the 41st amendment of the Senate and agree to the same with the following amendment: Strike out all after the word "provided," in line 47 of said Senate amendment, down to and including the word "located," in line 66, and insert in lieu thereof the following: That nothing in this act shall be construed to prevent all the shares in any of
26 the said associations held by any person or body corporate from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under State authority at the place where such bank is located and not elsewhere; but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State: Provided, further, that the tax so imposed under the laws of any State upon the shares of any of the associations authorized by this act shall not exceed the rate imposed upon the shares in any

of the banks organized under the authority of the State where such association is located, and the Senate agree to the same.

Managers on the part of the House of Representatives:

S. HOOPER.
E. B. WASHBURNE.
E. MALLORY.

Managers on the part of the Senate:

JOHN SHERMAN.
REVERDY JOHNSON.

The same having been read,

Mr. Hooper moved the previous question, which was seconded and the main question ordered, and under the operation thereof the said report was agreed to.

Mr. Hooper moved that the vote last taken be reconsidered, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

Ordered, that the clerk acquaint the Senate with the concurrence of the House in said report.

June 2, 1864.—Mr. Cobb, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled a bill of the following title, viz., H. R. 395, An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof.

When—

The Speaker signed the same.

June 3, 1864.—A message was received from the President of the United States, by Mr. Nicolay, his private secretary, notifying the House that he did this day approve and sign a bill of the following title, viz., H. R., 395, An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof.

The following are the entries which appear in the said Journal of the Senate in reference to House bill No. 395, "To provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof."

April 18, 1864.—A message from the House of Representatives by Mr. McPherson, its clerk:

The House of Representatives has passed a bill (H. R. 395) to provide a national currency secured by a pledge of United
27 States bonds, and to provide for the circulation and redemption thereof, in which it requests the concurrence of the Senate.

The bills received from the House of Representatives for concurrence were read the first and second times by unanimous consent.

Ordered, that the bill H. R. 395 be referred to the Committee on Finance.

April 21, 1864.—Mr. Sherman, from the Committee on Finance, to whom was referred the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to pro-

vide for the circulation and redemption thereof, reported it with amendments.

The Senate proceeded to consider the said bill as in Committee of the Whole, and—

On motion by Mr. Sherman,

Ordered, that the further consideration of the bill be postponed to and made the special order of the day for Tuesday, the 26th instant, at one o'clock, two-thirds of the Senators present agreeing thereto.

April 26, 1864.—The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and the amendments reported by the Committee on Finance having been in part agreed to,

On the question to agree to the following amendment reported by the committee, viz., strike out in the 12th section the following words: "except that the shareholders of any banking association having not less than five millions of dollars actually paid in as its capital stock shall be liable, as aforesaid, only to the amount invested in their shares," and in lieu thereof insert, except that the shareholders of any banking association now existing under State law, and having a capital stock not less than five millions of dollars actually paid in, and a surplus fund of twenty per cent. of its capital stock actually on hand, shall be liable only to the loss of the amount invested in their shares so long as said surplus fund shall remain undiminished,

It was determined in the affirmative { Yeas, 21. / Nays, 15.

On motion by Mr. Sherman,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

The amendments reported by the Committee on Finance having been further agreed to, and the amendment reported by the
28 committee to the forty-first section of the bill having been amended on the motion of Mr. Fessenden,

On the question to agree to the amendment as amended,

After debate,

On motion by Mr. Collamer,

The Senate adjourned.

April 27, 1864.—The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 395) to provide a na-

tional currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and—

On the question to agree to the amendment reported by the Committee on Finance to the forty-first section of the bill as amended on the motion of Mr. Fessenden,

On motion by Mr. Pomeroy to amend the amendment by striking out, in the part proposed to be inserted, the following words:

"Provided, that nothing in this act shall be construed to prevent the market value of the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of all taxes imposed by or under State authority, for State, county, or municipal purposes, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and all the remedies provided by State laws for the collection of such taxes shall be applicable thereto," and in lieu thereof inserting: Provided, that nothing in this act shall be construed as exempting the capital stock of an association beyond the amount invested in United States bonds and deposited with the Treasurer of the United States, as part of its capital or as security for its circulating notes, from being subject to the same rate of State and municipal taxation as is imposed upon other personal property in the State or city or town in which the association is located,

After debate,

On motion by Mr. Sherman,

Ordered, that the further consideration of the bill be postponed to and made the special order of the day for tomorrow at one o'clock, two-thirds of the Senators present agreeing thereto.

April 28, 1864.—The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and,

On motion by Mr. Sherman,

The Senate adjourned.

April 29, 1864.—The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and,

On the question to agree to the amendment proposed by Mr. Pomeroy, on the 27th instant, to the amendment reported by the Committee on Finance to the 41st section of the bill,

29 After debate,

It was determined in the negative { Yeas, 11. / Nays, 28.

On motion by Mr. Sherman,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Howard to amend the amendment reported by the committee to the 41st section of the bill by inserting, after the word "purposes," in the 63rd line, the words in the State where the bank is situated,

It was determined in the negative { Yeas, 11. Nays, 27.

On motion by Mr. Howard,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

An amendment to the amendment reported by the committee being proposed by Mr. Chandler,

On motion by Mr. Hendricks,

The Senate adjourned.

April 30, 1864.—The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and

The amendment reported by the Committee on Finance to the 41st section of the bill, as amended, having been agreed to, and the residue of the reported amendments having been also agreed to,

On motion by Mr. Conness,

The Senate adjourned.

May 2, 1864.—The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and the bill was further amended.

May 4, 1864.—The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and

After the consideration of executive business,

The Senate adjourned.

30 May 5, 1864.—The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof.

On motion by Mr. Harlan that the further consideration of the

bill be postponed, and that the Senate resume the consideration of the joint resolution (S. 8) for the relief of the State of Wisconsin,

It was determined in the affirmative { Yeas, 29. / Nays, 5.

On motion by Mr. Sherman,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the motion was agreed to.

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and, no further amendment being made to the bill, it was reported to the Senate.

On the question, Will the Senate concur in the following amendment made in Committee of the Whole, viz., in section 1, line 14, strike out the words "by and with the advice and consent of the Senate,"

On motion by Mr. Buckalew to amend the amendment made in Committee of the Whole, so that it will read, Strike out the words "by and with the advice and consent of the Senate," and in lieu thereof insert upon reasons to be communicated by him to the Senate,

It was determined in the affirmative, and

The amendment made in Committee of the Whole, as amended in the Senate, was then concurred in.

On the question, Will the Senate concur in the following amendment made in Committee of the Whole, viz., in section 12 strike out the words "except that the shareholders of any banking association having not less than five millions of dollars actually paid in as its capital stock shall be liable as aforesaid only to the amount invested in their shares," and in lieu thereof insert, except that the shareholders of any banking association now existing under State law and having a capital stock of not less than five millions of dollars actually paid in, and a surplus fund of twenty per centum of its capital stock actually on hand, shall be liable only to the loss of the amount invested in their shares so long as said surplus fund shall remain undiminished.

On motion by Mr. Sherman to amend the amendment made in Committee of the Whole by striking out all after the word
31 "except," in the first line of the words proposed to be inserted, and in lieu thereof inserting, that shareholders of any banking association now existing under State laws having not less than five millions of dollars of capital actually paid in and a sur-

plus of twenty per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares, and such surplus of twenty per centum shall be kept undiminished and be in addition to the surplus provided for in this act; and if at any time there shall be any deficiency in said surplus of twenty per centum the said banking association shall not pay any dividends to its shareholders until such deficiency shall be made good; and in case of such deficiency the Comptroller of the Currency may compel said banking association to close its business and wind up its affairs under the provisions of this act:

It was determined in the affirmative { Yeas, 20. Nays, 12.

On motion by Mr. Grimes,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

The amendment made in Committee of the Whole as amended in the Senate, was then concurred in.

On the question to concur in the following amendment made in Committee of the Whole, viz., in the forty-first section of the bill strike out the following words: "And nothing in this act shall be construed to prevent the taxation by States of the capital stock of banks organized under this act, the same as the property of other moneyed corporations, for State or municipal purposes; but no State shall impose any tax upon such associations, or their capital, circulation, dividends, or business, at a higher rate of taxation than shall be imposed by such State upon the same amount of moneyed capital in the hands of individual citizens of such State: Provided, that no State tax shall be imposed on any part of the capital stock of such association invested in the bonds of the United States deposited as security for its circulation," and in lieu thereof insert, And in lieu of all other taxes every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum each half year from and after the first day of January, eighteen hundred and sixty-four, upon the average amount of its notes in circulation, and a duty of one-quarter of one per centum each half year upon the average amount of its deposits, and a duty of one-quarter of one per centum each half year, as aforesaid, on the average amount of its capital stock beyond the amount invested in United States bonds; and in case of default in the payment thereof by any association the duties
32 aforesaid may be collected in the manner provided for the collection of United States duties of other corporations, or the Treasurer may reserve the amount of said duties out of the interest

as it may become due on the bonds deposited with him by such defaulting association; and it shall be the duty of each association within ten days from the first days of January and July of each year to make a return under the oath of its president or cashier to the Treasurer of the United States, in such form as he may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and of the average amount of its capital stock beyond the amount invested in United States bonds, for the six months next preceding said first days of January and July as aforesaid, and in default of such return and for each default thereof each defaulting association shall forfeit and pay to the United States the sum of two hundred dollars, to be collected either out of the interest as it may become due such association on the bonds deposited with the Treasurer or, at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States; and in case of such default the amount of the duties to be paid by such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency and upon the highest amount of its deposits and capital stock, to be ascertained in such manner as the Treasurer may deem best: Provided, that nothing in this act shall be construed to prevent the market value of the shares in any of the said associations held by any person or body corporate from being included in the valuation of the personal property of such person or corporation in the assessment of all taxes imposed by or under State authority for State, county, or municipal purposes, but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals citizens of such State; and all the remedies provided by State laws for the collection of such taxes shall be applicable thereto: Provided, also, that nothing in this act shall exempt the real estate of associations from either State, county, or municipal taxes to the same extent, according to its value, as other real estate is taxed.

On motion by Mr. Chandler to amend the amendment made in Committee of the Whole, by inserting at the end of the first proviso, in the part proposed to be inserted in lieu of the words to be stricken out, the following: Provided, further, that no tax shall be imposed under the laws of any State upon the shares in any of the associations authorized by this act, at a rate exceeding that imposed upon the shares in banks organized under the authority of the State where such association is located,

It was determined in the affirmative.

On motion by Mr. Sumner to further amend the amendment made in Committee of the Whole by striking out the words proposed to be inserted, and in lieu thereof inserting, And in lieu of all other taxes on the capital, circulation, deposits, shares, and other property, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one per centum each
33 half year from and after the first day of January, eighteen hundred and sixty-four, upon the average amount of its notes in circulation, and a duty of one-half of one per centum each half year upon the average amount of its deposits, and a duty of one-half

of one per centum each half year, as aforesaid, on the average amount of its capital stock, beyond the amount invested in United States bonds; and in case of default in the payment thereof by any association, the duties aforesaid may be collected in the manner provided for the collection of United States duties of other corporations or the Treasurer may reserve the amount of such duties out of the interest, as it may become due, on the bonds deposited with him by such defaulting association. And each association shall, within ten days from the first days of January and July of each year, make a return, under the oath of its president or cashier, to the Treasurer of the United States, in such form as he may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and of the average amount of its capital stock beyond the amount invested in United States bonds for the six months next preceding the first days of January and July as aforesaid, and in default of such return and for each default thereof, each defaulting association shall forfeit and pay to the United States the sum of two hundred dollars, to be collected either out of the interest, as it may become due to such association, on the bonds deposited with the Treasurer, or at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States; and in case of such default the amount of the duties to be paid by such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency, and upon the highest amount of its deposits and capital stock, to be ascertained in such other manner as the Treasurer may deem best: Provided, that nothing in this act shall exempt the real estate of associations from either State, county, or municipal taxes to the same extent, according to its value, as other real estate is taxed: Provided, also, that all taxes imposed by this or any future act on banking associations organized under national legislation shall be applied exclusively to the payment of the interest and principal of the national debt of the United States.

After debate,

On motion by Mr. Johnson,

The Senate adjourned.

May 6, 1864.—The Senate resumed the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and

On the question to agree to the amendment yesterday proposed by Mr. Sumner to the amendment made in Committee of the Whole to the 41st section of the bill as amended in the Senate,

It was determined in the negative, { Yeas, 11. / Nays, 24.

34 On motion by Mr. Sumner,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Collamer to further amend the amendment made in Committee of the Whole by striking out, in the first line of the words proposed to be inserted, the word "other," and in lieu thereof inserting existing,

It was determined in the affirmative.

The amendment made in Committee of the Whole to the 41st section of the bill having been amended in the Senate,

On the question, Will the Senate concur in the said amendment as amended?

It was determined in the affirmative { Yeas, 29. / Nays, 8.

On motion by Mr. Howard,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So the amendment made in Committee of the Whole to the 41st section of the bill as amended in the Senate was concurred in.

The residue of the amendments made in Committee of the Whole to the bill, with the exception of the amendment to the 30th section, having been concurred in,

On motion by Mr. Hale to amend the bill by striking out, in the 9th section, line 20, the words "obtained from," and in line 21 the words "owing to the association of which he was a director,"

It was determined in the affirmative.

On motion by Mr. Chandler to amend the bill by inserting in section 31, line 28, after the word "Francisco" the words And one-half of said twenty-five per centum in banks organized under this act in the cities of St. Louis, Louisville, Chicago, Detroit, Milwaukee, Cincinnati, Cleveland, Pittsburg, and Portland, may consist of balances due to the association available for the redemption of its circulating notes from an association in the cities of New York, Boston, or Philadelphia,

It was determined in the negative { Yeas, 14. / Nays, 21.

35 On motion by Mr. Sherman,

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On the question, Will the Senate concur in the amendment made in Committee of the Whole to the 30th section of the bill, as follows: Strike out in lines four and five the words "a rate not exceeding seven per centum per annum" and insert the rate allowed by the laws of the State or Territory where the bank is located, and no more; and when no rate is fixed by the laws of the State or Territory the bank may take, receive, reserve, or charge a rate not exceeding seven per centum,

On motion by Mr. Sherman to amend the amendment by inserting after the word "more," in the words proposed to be inserted, the words except that where, by the laws of any State, a different rate is limited for banks of issue organized under State laws, the rate so limited shall be allowed for associations organized in any such State under this act,

It was determined in the affirmative; and

The amendment made in Committee of the Whole as amended in the Senate was then concurred in.

On motion by Mr. Chandler to further amend the bill by striking out in section 31 the words "Saint Louis, Louisville, Chicago, Detroit, Milwaukee, New Orleans, Cincinnati, Cleveland, Pittsburg, Baltimore, Portland (Maine), Albany, San Francisco,"

On motion by Mr. Henderson to amend the amendment proposed by Mr. Chandler by inserting the words Boston and Philadelphia,

It was determined in the negative.

On the question to agree to the amendment proposed by Mr. Chandler,

It was determined in the affirmative { Yeas, 15. / Nays, 14.

On motion by Mr. Grimes,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Chandler to amend the bill by inserting in section 32, line 5, after the word "par," the words or an association in either of the cities named in the preceding section at which
36 it shall redeem its circulating notes at a discount not exceeding one-quarter of one per cent.,

It was determined in the affirmative.

On motion by Mr. Henderson to amend the bill by striking out in section 22, line 3, the words "three hundred millions of dollars" and inserting the amount now authorized to be issued by the Comptroller of the Currency to banks already created,

After debate,

Mr. Johnson, by unanimous consent, submitted a motion to reconsider the vote agreeing to the amendment proposed by Mr. Chandler to the 31st section of the bill, striking out the names of certain cities; and

On motion by Mr. Collamer,

The Senate adjourned.

May 9, 1864.—On motion by Mr. Sherman,

The Senate resumed the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof; and.

On the question to agree to the amendment proposed by Mr. Henderson, viz: In section 22, line 3, strike out the words "three hundred millions of dollars" and in lieu thereof insert the amount now authorized to be issued by the Comptroller of the Currency to banks already created,

It was determined in the negative { Yeas, 12. / Nays, 23.

On motion by Mr. Trumbull,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Doolittle to amend the bill by inserting as an additional section the following:

SEC. —. And be it further enacted, That from and after the passage of this act no person, banker, banking association, or banking or other corporation shall make, issue, or reissue any bills, notes, or certificates of any kind or denomination whatever designed to circulate as money which at the passage of this act shall not be actually issued and in circulation as money under the laws of the United States or of the several States unless the said person, banker, banking association, or corporation shall redeem the same at its place of business in gold and silver coin on demand: Provided, that nothing herein contained shall be construed to prohibit those associations which have become duly organized under the provisions of

"An act to provide for a national currency secured by a
37 pledge of United States stocks and to provide for the circulation and redemption thereof," approved February twenty-

five, eighteen hundred and sixty-three, and shall have transferred and delivered to the Treasurer of the United States the bonds of the United States under the provisions of the fifteenth and sixteenth sections of said act from receiving the currency to which they have become entitled and from putting the same into circulation as money under the provisions of said act: And provided further, that nothing herein contained shall be construed to prohibit any existing banker, bank, banking association, or corporation existing under the laws of any State and having notes, bills, or certificates in circulation as money from organizing themselves into banking associations under the said act of Congress and acts amendatory thereto; and in case of such organization and upon complying with the provisions of said act they shall be entitled to receive and put into circulation of the national currency provided for in said act an amount equal to the amount of the notes, bills, or certificates of said bank in circulation, which shall be from time to time withdrawn from circulation, redeemed, and cancelled, not exceeding the amount of its capital stock.

SEC. —. And be it further enacted, That from and after the passage of this act every person, banker, banking association, or banking corporation shall reduce the amount of its notes, bills, or certificates in circulation as money to the amount of its cash capital actually paid in and — per centum added thereto, or to the amount actually secured by the pledge of the stocks of the United States or of the State where the bank or banking office is situated pursuant to the laws of the United States or of the State where the bank is situated; said reduction to be made in the following manner: One-fourth of said excess of circulation beyond what is above provided shall be redeemed and cancelled on or before the first day of —— next; one-half on or before the first day of —— next; three-fourths on or before the first day of —— next, and the remainder on or before the first day of —— next; and upon all bills, notes, and certificates issued or reissued or remaining in circulation as money over and above the amount provided in this and the preceding section the said several bankers, banks, or banking corporations shall pay to the United States a tax of one per centum per month.

A division of the question was called for by Mr. Johnson; and

On the question to agree to the first section of the proposed amendment,

It was determined in the negative { Yeas, 3. / Nays, 32.

On motion of Mr. Doolittle,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

38 Those who voted in the negative are—

(Here follows a list of names.)

On the question to agree to the second section of the amendment proposed by Mr. Doolittle,

Mr. Doolittle asked and obtained leave of the Senate to withdraw the same.

On the question to agree to the motion made by Mr. Johnson, on the 6th instant, to reconsider the vote agreeing to the amendment proposed by Mr. Chandler, to wit, in the 31st section strike out the the words "St. Louis, Louisville, Chicago, Detroit, Milwaukee, New Orleans, Cincinnati, Cleveland, Pittsburgh, Baltimore, Portland (Maine), Albany, San Francisco,"

It was determined in the affirmative; and

The question recurring, Will the Senate agree to said amendment?

Mr. Chandler asked and obtained leave of the Senate to withdraw his said amendment.

On motion by Mr. Morgan to amend the bill by inserting in section 1, line 28, after the word "and," the word Buffalo,

It was determined in the affirmative.

On motion by Mr. Collamer to further amend the bill by inserting in section 23, line 13, after the word "debt," the words and in redemption of the national currency,

It was determined in the affirmative { Yeas, 23. / Nays, 12.

On motion by Mr. Collamer,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Collamer to further amend the bill by inserting at the end of section 32 the words: And provided further, that every association formed or existing under the provisions of this act shall take and receive at par for any debt or liability to said association any and all notes or bills issued by any association existing under and by virtue of this act,

It was determined in the affirmative.

On motion by Mr. Collamer to further amend the bill by inserting at the end of section 45 the words: And provided, further, that every association which shall be selected and designated as receiver or depository of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid in to the Government for internal revenue or for loans or stocks,

It was determined in the affirmative.

39 On motion of Mr. Callamer to further amend the bill by inserting in section 31, line 9, after the word "deposits," the

words, and one-half of the coin received by each association from the Treasury for interest on its bonds shall by such association be kept, held, and sequestered as a part of the amount of money required so to be kept on hand until the full amount is composed of coin, which shall so remain until specie payments shall be resumed.

On motion by Mr. Chandler to amend the amendment proposed by Mr. Collamer by inserting at the end thereof the words: Provided further, that every State bank and individual banker shall be compelled to hold and retain one-half the specie received for interest on Government bonds until the resumption of specie payments,

It was determined in the negative.

The amendment proposed by Mr. Collamer having been amended on the motion of Mr. Johnson by striking out the words "one-half" and inserting one-fourth,

On the question to agree to the amendment as amended,

After debate,

On motion by Mr. Fessenden,

The Senate adjourned.

May 10, 1864.—The Senate resumed the consideration of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof; and

On the question to agree to the amendment proposed by Mr. Collamer, as modified on the motion of Mr. Johnson, viz., in section 31, line 9, after the word "deposits," insert, and one-fourth of the coin received by each association from the Treasury for interest on its bonds shall by such association be kept, held, and sequestered as a part of the amount of money required so to be kept on hand until the full amount is composed of coin, which shall so remain until specie payments shall be resumed,

It was determined in the negative { Yeas, 15. / Nays, 20.

On motion by Mr. Collamer,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Collamer to amend the bill by inserting, as an additional section, the following:

SEC. —. And be it further enacted, That the amount of Treasury notes, in any form, now authorized to be issued shall not
40 be increased, and that such amount shall be diminished to

the same amount that bills of national currency are issued to associations,

It was determined in the negative { Yeas, 14. Nays, 17.

On motion by Mr. Collamer,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Collamer to amend the bill by inserting in section 22, line 2, after the word "issued," the words or the amount of capital stock of the associations organized,

It was determined in the affirmative.

On motion by Mr. Lane, of Kansas, to further amend the bill by inserting in section 31, line 27, after the word "Albany," the word Leavenworth,

It was determined in the affirmative.

On motion by Mr. Sherman to further amend the bill by striking out, in section 32, the words, "That each association shall select, subject to the approval of the Comptroller of the Currency, an association in either of the cities named in the preceding section at which it will redeem its circulating notes at par," and in lieu thereof inserting: That each association organized in any of the cities named in the foregoing section shall select, subject to the approval of the Comptroller of the Currency, an association in the city of New York at which it will redeem its circulating notes, at a rate of exchange for all cities west of the Alleghany mountains not exceeding one-quarter of one per centum, and for all cities east of the Alleghany mountains at par. And each of such associations may keep three-fifths of its lawful money reserve in cash deposits in the city of New York. And each association not organized within the cities named in the preceding section shall select, subject to the approval of the Comptroller of the Currency, an association in either of the cities named in the preceding section at which it will redeem its circulating notes at par,

It was determined in the affirmative.

On motion by Mr. Fessenden to amend the bill by striking out, in section 31, line 27, the words "Portland (Maine),"

It was determined in the affirmative.

On motion by Mr. Sprague to further amend the bill by inserting, in section 31, line 28, after the word "Buffalo," the words Providence, Rhode Island,

It was determined in the affirmative.

On motion by Mr. Sprague to further amend the bill by insert-

ing, at the end of section 10, the words: Provided, that if
41 the directors fail to fix the day as aforesaid, shareholders representing two-thirds of the shares may,

It was determined in the affirmative.

On motion by Mr. Sprague to further amend the bill by inserting, in section 19, line 6, after the word "association," the words, a receipt therefor to be given to said association,

It was determined in the affirmative.

On motion by Mr. Powell to further amend the bill by inserting after the word "value," in section 21, line 7, and after the word "direct," in the 10th line of the same section, the words in gold or silver coin,

It was determined in the negative { Yeas, 11. Nays, 17.

On motion by Mr. Powell,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Powell to amend the bill by striking out in section 31, lines 3, 6, and 7, the words "lawful money of the United States" and inserting in gold or silver coin,

It was determined in the negative.

A motion was made by Mr. Cowan to amend the bill by inserting in section 50, line 8, after the word "collect," the words, an amount from each shareholder equal to the amount of stock held by such shareholder in such association; and,

On motion by Mr. Sherman to amend the amendment of Mr. Cowan, so that it will read: after the word "direct," in line 13 of the 50th section insert, and may, if necessary to pay the debts of such association and enforce the individual liability of the stockholders provided for by the 12th section of this act,

It was determined in the affirmative { Yeas, 26. Nays, 10.

On motion by Mr. Cowan,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

The amendment of Mr. Cowan as amended on the motion of Mr. Sherman was then agreed to.

On motion by Mr. Cowan to amend the bill by striking out, in section 13, lines 7, 8, and 9, the words "and no increase of
42 the capital beyond the maximum so determined shall thereafter be made without the consent of the comptroller,"

It was determined in the affirmative.

On motion by Mr. Henderson to further amend the bill by striking out, in section 26, line 14, the words "amount of the circulation issued for the same," and inserting value they bore at the time of said deposit,

It was determined in the negative { Yeas, 12. Nays, 24.

On motion by Mr. Henderson,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Henderson to amend the bill by striking out, in section 7, the following proviso: "Provided, that banks with a capital of not less than fifty thousand dollars may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed six thousand inhabitants,"

It was determined in the negative { Yeas, 19. Nays, 22.

On motion by Mr. Buckalew,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Henderson to amend the bill by striking out section 45, in the following words:

"SEC. 45. And be it further enacted, That all associations under this act, when designated for that purpose by the Secretary of the Treasury, shall be depositories of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties as depositories of public moneys, and financial agents of the Government, as may be required of them. And the Secretary of the Treasury shall require from the associations thus designated satisfactory security, by the deposit of United States bonds and otherwise, for the safe keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties

as financial agents of the Government: And provided fur-
43 ther, that every association which shall be selected and designated as receiver or depository of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid in to the Government for internal revenue or for loans or stocks,"

It was determined in the negative { Yeas, 11. Nays, 28.

On motion by Mr. Saulsbury,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Sprague to amend the bill by inserting in section 24, line 14, after the words "United States," the words one by the association, and in line 12 of said section by striking out "three" and inserting four,

It was determined in the affirmative.

On motion by Mr. Sprague to amend the bill by inserting in section 25, line 14, after the words "United States," the words and one by the association,

It was determined in the affirmative.

On motion by Mr. Sprague to amend the bill by inserting at the end of section 63 the words: Provided, that savings banks owning stock in any of the aforesaid associations shall not be liable over and above the value of the stock owned by them,

It was determined in the negative.

On motion by Mr. Buckalew to amend the bill by striking out, in section 22, lines 10 and 11, the words "one dollars, two dollars, three dollars,"

It was determined in the negative { Yeas, 8. Nays, 26.

On motion by Mr. Buckalew,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

On motion by Mr. Doolittle to amend the bill by inserting as an additional section the following:

SEC. —. And be it further enacted, That any person, banker, banking association, or banking corporation, which shall not, within one year from and after the passage of this act, reduce and

44 thereafter retain the amount of its notes, bills, or certificates, in circulation as money, below the amount of its cash capital actually paid in according to law, and fifty per centum added thereto, or to the amount of its circulation actually secured by a pledge of the stocks of the United States or of the State where the bank or banking office is situated, pursuant to the laws of the United States or of the said State, shall not be entitled to make the Treasury notes of the United States a legal tender in payment of any demands against the same, and shall pay to the United States upon any excess over and above what is herein provided a tax of one-half per centum per month,

It was determined in the negative.

On motion by Mr. Powell to amend the bill by striking out all after the enacting clause and in lieu thereof inserting, That the act entitled "An act to provide a national currency secured by a pledge of United States stocks," approved February twenty-five, eighteen hundred and sixty-three, be, and the same is hereby, repealed,

It was determined in the negative { Yeas, 6. Nays, 31.

On motion by Mr. Powell,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

No further amendment being proposed to the bill,

Ordered, that the amendments be engrossed and the bill read a third time.

The said bill as amended was read a third time.

On the question, Shall the bill pass?

It was determined in the affirmative { Yeas, 30. Nays, 9.

On motion by Mr. Wilson,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are—

(Here follows a list of names.)

Those who voted in the negative are—

(Here follows a list of names.)

So it was—

Resolved, That the bill pass.

Ordered, that the secretary request the concurrence of the House of Representatives in the amendments of the Senate to the said bill.

After the consideration of executive business,

The Senate adjourned.

45 May 25, 1864.—A message from the House of Representatives by Mr. McPherson, its clerk:

It has agreed to some and disagreed to other amendments of the Senate to the bill of the House (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, asks a conference on the disagreeing votes of the two houses thereon, and has appointed Mr. Hooper, Mr. E. B. Washburne, and Mr. Mallory managers *at* the same on its part.

The Senate proceeded to consider its amendments to the bill (H. R. 395) last mentioned, disagreed to by the House of Representatives, and

On motion by Mr. Sherman,

Resolved, That the Senate insist upon its amendments to the said bill, disagreed to by the House of Representatives, and agree to the conference asked by the House on the disagreeing votes of the two houses thereon.

Ordered, that the conferees on the part of the Senate be appointed by the president *pro tempore*, and

The president *pro tempore* appointed Mr. Sherman, Mr. Foster, and Mr. Johnson.

Ordered, that the secretary notify the House of Representatives thereof.

June 1, 1864.—Mr. Sherman, from the committee of conference on the disagreeing votes of the two houses on the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, submitted the following report:

The committee of conference on the disagreeing votes of the two houses on the amendments to the bill (H. R. 395) "to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," having met, after full and free conference, have agreed to recommend and do recommend to their respective houses as follows:

That the House of Representatives recede from their disagreement to the 15th amendment of the Senate and agree to the same with an amendment, as follows: In line 2 of said amendment strike out the words "the bonds," and insert in lieu thereof the following words: any excess of bonds beyond one-third of its capital stock and; and the Senate agree to the same.

That the Senate recede from their 19th amendment.

That the House of Representatives recede from their disagreement to the 36th amendment of the Senate.

That the House recede from their disagreement to so much of the 37th amendment of the Senate as proposes to insert the words "Buffalo and Providence, Rhode Island," and agree to the same with an amendment as follows: Strike out the words proposed to be inserted by said Senate amendment and insert in lieu thereof the words Washington city; and the Senate agree to the same.

That the House recede from their disagreement to the 38th

46 amendment of the Senate and agree to the same with the following amendments: Strike out all after the word "notes," in line 7 of the matter proposed to be inserted by said Senate amendment, down to and including the word mountains, in line 10; and in line 12 strike out the words "three-fifths" and insert in lieu thereof the words one-half; and the Senate agree to the same.

That the House recede from their disagreement to the 41st amendment of the Senate and agree to the same with the following amendment: Strike out all after the word "provided," in line 47 of said Senate amendment, down to and including the word "located," in line 66, and insert in lieu thereof the following: That nothing in this act shall be construed to prevent all the shares in any of said associations held by any person or body corporate from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under State authority at the place where such bank is located and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State: Provided, further, that the tax so imposed under the laws of any State upon the shares of any of the associations authorized by this act shall not exceed the rate imposed upon the shares in any of the banks organized under the authority of the State where such association is located; and the Senate agree to the same.

JOHN SHERMAN,
REVERDY JOHNSON,
Managers on the Part of the Senate.
S. HOOPER,
E. B. WASHBURNE,
R. MALLORY,
Managers on the Part of the House of Representatives.

The Senate proceeded to consider the report, and

On motion by Mr. Sherman,

Resolved, That the Senate agree thereto.

Ordered, that the secretary notify the House of Representatives thereof.

June 2, 1864.—A message from the House of Representatives by Mr. McPherson, its clerk:

Mr. President, the House of Representatives has agreed to the report of the committee of conference on the disagreeing votes of the two house- on the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof.

The Speaker of the House of Representatives having signed four enrolled bills (S 218, H. R. 120, H. R. 395, H. R. 474) and an enrolled joint resolution (H. R. 51), I am directed- to bring them to the Senate for the signature of its President.

The President *pro tempore* signed the enrolled bills S. 218, H. R. 120, H. R. 395, and H. R. 474, and the enrolled joint resolution H. R. 51, last reported to have been examined, and they were deliv-

ered to the committee to be presented to the President of the United States.

47 June 3, 1864.—Mr. Anthony, from the Committee on Printing, to whom was referred the resolution to print three thousand additional copies of the bill (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, reported it without amendment.

The Senate proceeded to consider the said resolution, and

The resolution was agreed to.

Mr. Howe reported from the committee that they yesterday presented to the President of the United States the following enrolled bills and joint resolution:

* * * * * * *

H. R. 395, An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof.

* * * * * * *

June 4, 1864.—A message from the House of Representatives by Mr. McPherson, its clerk:

Mr. President, the President of the United States yesterday approved and signed an act (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof.

The plaintiff here rested.

The defendant then, to maintain the issues on his part, called as a witness—

THOMAS E. ROGERS, who was asked by counsel for defendant what disposition was made of the tax collected from the plaintiff.

To this question the counsel for the plaintiff then and there objected as immaterial and irrelevant.

The said objection was overruled by the court.

To which ruling of the court the counsel for the plaintiff then and there excepted.

The witness then, under the said ruling of the court, testified that the money was covered into the Treasury and was applied to the payment of the semi-annual duty or tax of the plaintiff.

Counsel for the defendant then stated that he had no other evidence to offer except the statute.

The evidence here closed, and the above was all the evidence taken on the trial.

Counsel for the plaintiff then moved the court to instruct the jury to return a verdict for the plaintiff.

And the said motion was overruled by the court.

To which ruling of the court the counsel for the plaintiff then and there excepted.

Counsel for the defendant then moved the court to instruct the jury to return a verdict for the defendant.

Which motion was granted by the court.

To which ruling of the court the counsel for the plaintiff then and there, and before the jury rendered their verdict, excepted.

48 Thereupon the jury, under the instruction of the court, returned a verdict for the defendant.

And inasmuch as the said several matters so produced and given in evidence and the several rulings of the court thereon do not appear by the record herein, the counsel for the plaintiff did then and there prepare the foregoing bill of exceptions, which said bill of exceptions contains all the evidence taken at the trial, and did propose the same to the said Andrew C. Bradley, justice of the said court, and the said justice did thereupon sign the same, now for then, this 29th day of June, 1893.

A. C. BRADLEY, *Justice.* [SEAL.]

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from — to —, inclusive, to be a full, true, and correct transcript of the record of all the proceedings had in said court in cause No. 32064, at law, wherein The Twin City National Bank of New Brighton is plaintiff and Enos H. Nebeker is defendant, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 26 day of August, A. D. 1893.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 250. The Twin City National Bank of New Brighton, appellant, *vs.* Enos H. Nebeker. Court of Appeals, District of Columbia. Filed Sep. 1, 1893. Robert Willett, clerk.

49 In the Court of Appeals of the District of Columbia.

TUESDAY, *February 15th*, 1894.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Appellant, *vs.* ENOS H. NEBEKER. } No. 250.

The argument of this case was commenced by Mr. John J. Crawford for the appellant.

In the Court of Appeals of the District of Columbia.

FRIDAY, *February 16th*, 1894.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Appellant, *vs.* ENOS H. NEBEKER. } No. 250.

The argument of this case was continued by Mr. John J. Crawford for the appellant and Mr. A. A. Birney for the appellees, and concluded by Mr. John J. Crawford for the appellant.

50 This suit involves the validity of that part of section 41 of the national bank act approved June 3, 1864, which imposes the semi-annual tax or charge upon the circulating notes of the national banks organized thereunder. (U. S. Stat. at L., vol. 13, p. 111.)

The appellant, a duly organized national bank, went into liquidation in a lawful manner, made the deposit of money required to redeem its outstanding circulation on August 25, 1891, and demanded of the Treasurer of the United States, who is the appellee herein, the return of its bonds. The Treasurer refused to surrender the said bonds until payment should be made of the sum of $56.25, which was demanded by him as the amount due on its average circulation during the half year from January 1st to June 30, 1891. In order to obtain the bonds, the bank paid the money under protest and immediately instituted this suit to recover it.

Appellant was permitted to introduce the Journals of the Senate and House of Representatives in evidence, and the history of the bill from its introduction to its final passage is set forth in the bill of exceptions.

The original bill, entitled An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, was introduced in the House of Representatives.

Section 41 of this bill provided for the custody of the plates used in printing the bills, and, further, that "the expenses necessarily incurred in executing the provisions of this act respecting the procuring of such notes and all other expenses of the bureau shall be paid out of the taxes or duties now or hereafter

51 to be assessed on the circulation and collected from associations organized under this act." There was a further clause requiring the banks to pay "a duty of one per cent. each half year upon the maximum amount of their circulating notes during the six months," etc., etc. This last provision was stricken out by amendment in the House, and in lieu thereof there was inserted a provision recognizing the rights of the States to tax such banks, with certain limitations on the power. The bill then passed the House properly and was sent to the Senate. In that body many amendments were adopted, and among these one to section 41 aforesaid. This amendment struck out all but the first paragraph of the

section, which provides for the custody of the plates and the payment of the expenses attending the procuring of the notes, etc., and added a lengthy provision concerning the powers and limits of State taxation as well as the taxes and duties upon circulation, deposits, etc., required to be paid to the United States.

That portion of the amendment which relates to the charges upon the circulation, etc., reads thus: "And in lieu of all existing taxes every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum each half year from and after the first day of January, 1864, upon the average amount of its notes in circulation, and a duty of one-quarter of one per centum each half year upon the average amount of its deposits, and a duty of one-quarter of one per centum each half year, as aforesaid, on the average amount of its capital stock beyond the amount invested in United States bonds."

52 In case of default in payment of these dues, the Treasurer was required to retain the sums due from the interest accruing on the bonds deposited in accordance with the provisions of the same law. The bill was finally passed and approved with the aforesaid section 41, as amended in the Senate.

The plaintiff, having introduced evidence to establish the necessary allegations of its declaration, rested its case; whereupon the defendant moved an instruction to the jury to return a verdict in his favor, which was sustained.

Plaintiff took a bill of exceptions to the action of the court, in which is set forth all the testimony, and has prosecuted this appeal from the judgment entered on the said verdict.

There are three propositions of law in this case, the soundness of which it is incumbent upon the appellant to maintain in order to procure reversal of the judgment.

These are (1) that the defendant can be held liable in person for money demanded and received by him in his official capacity of Treasurer of the United States, under an act of Congress which may be found to be void; (2) that the Journals of Congress may be brought into court and inspected, in order to ascertain where and in what form a bill may have originated and in which house the amendment that may have converted it into a bill for raising revenue was first offered and adopted; (3) that the revenue clause of the act under consideration is of the nature of an independent and original bill for raising revenue that was injected into the body of a House bill for another and different purpose, in violation of the prohibition of the Constitution.

53 In the view which we have taken of the merits of the cause, as involved in the third of these propositions, it is not necessary that we should now decide the questions raised in the first and second. Interesting and important as they are, we think it wiser to pretermit their discussion and decision in this case and to let their final determination await a cause in which the necessity therefor shall become imperative. In the meantime they may be finally

determined for the guidance of all the courts in the tribunal of last resort.

Assuming, then, that the suit can be maintained against Nebeker as a private person, and also that the Journals of Congress may be inspected in order to ascertain in which house the objectionable feature of the law had its origin, we come to the consideration of the main question. The contention is that the taxing clause of the act, having originated in the Senate, is void because enacted in disobedience to the first clause of section seven, article one, of the Constitution, which reads as follows: "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills." The time-honored and jealously guarded principle of the British constitution which has come down to us, with modification, in the above clause, has not the same reasonable foundation for its existence in our system of government and in the Constitution of the Federal Congress that it has in the land of its birth; but it is nevertheless an express command that must be obeyed, and no bill can become a law of the land in disobedience to its injunction.

54 If appellant's contention is well founded, the provision of the law which has been assailed must be declared void, no matter how far-reaching, embarrassing, or even disastrous the consequences may be; but to justify the courts in overturning an act of Congress that has been passed and approved without suggestion of its unconstitutionality and acquiesced in for more than twenty-five years without question, during which time millions of money have been demanded and collected under its so-called revenue feature, the conclusion must be logical, plain, and unmistakable; the construction must be imperative.

From the statement of the case it appears that section 41 of the original bill, as introduced into the House of Representatives, contained a clause imposing a tax upon the circulating notes of the banks, which differs only in points of detail from the Senate's amendment. This was stricken out, however, before the bill was sent to the Senate. If, in fact, this provision made the bill one for raising revenue, it might with some plausibleness be contended that as a revenue bill it did originate in the House of Representatives, and that its effect, so far as the constitutional requirement is concerned, was not altered by striking out the revenue feature therein before its passage. In this view the action of the Senate would be but an exercise of the express power of amendment conferred in such case by the Constitution itself. We say this would seem plausible if confined to a bill, the revenue provisions of which are germane to its main subject and purpose, and not the result of an attempt to join an independent and unrelated object to that expressed in the title, for some ulterior purpose. We are not,

55 however, sufficiently impressed with the soundness of this reasoning to base our decision upon a conclusion reached by it.

Whilst the primary object of all taxation is the raising of revenue for the support of the Government, and all bills for that general

purpose are "bills for raising revenue" in the sense of the Constitution, and therefore must originate in the House of Representatives, it does not necessarily follow that every bill for some other legitimate and well-defined general purpose becomes a revenue bill in the same sense, because as an incident to the main object it may contain a provision for the payment of certain dues, license fees, or special taxes. This principle was endorsed by the supreme court of Oregon in a case where an act of the legislature licensing the sale of intoxicating liquors was attacked under a like provision of the constitution of that State, because it originated in the senate. State *v.* Wright, 14 Oregon, 365. In another case in the same State the court went so far as to extend the principle to a bill subjecting mortgages to taxation, which had been exempted therefrom under previous laws, saying: "It is not sufficiently clear that a law which merely declares that certain property theretofore exempt from taxation shall thereafter be subject to taxation is strictly a law for raising revenue." Mumford *v.* Sewall, 11 Or., 67, followed by the U. S. C. C. in Dundee Mortgage Co. *v.* Parish, 11 Sawyer, 92.

In Missouri also, though not with respect to this particular constitutional inhibition, it was held that a liquor-license law was a police regulation and not a bill for raising revenue. In the course of the opinion the court said: "Many fines, penalties, and
56 forfeitures become a part of the public revenues of the State that are not derived from taxation. The disposition of the fund derived from the license fees does not necessarily determine the character of such fees." State *v.* Hudson, 78 Mo., 304.

In a case in Georgia the act incorporating a town was attacked in an action to recover taxes imposed thereby on the ground that it was a bill for raising revenue and had originated in the Senate. The supreme court upheld the act on the ground that its main purpose and real object was to incorporate the town and the taxation feature was but incidental thereto. Harper *v.* Com'rs, 23 Ga., 566.

The foregoing decisions are in accord with the views expressed by Judge Story in his work on the Constitution, who, after giving a brief history of the origin of the constitutional provision, says: "What bills are properly bills for raising revenue in the sense of the Constitution has been matter of some discussion. A learned commentator supposes that every bill which indirectly or consequentially may raise revenue is within the sense of the Constitution a revenue bill. He therefore thinks that the bills establishing the Post-office and the Mint and regulating the value of foreign coin belong to this class and ought not to have originated (as they in fact did) in the Senate; but the practical construction of the Constitution has been against his opinion, and, indeed, the history of the origin of the power already suggested abundantly proves that it has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for
57 other purposes which may incidentally create revenue. No one supposes that a bill to sell any of the public land or to sell public stock is a bill to raise revenue in the sense of the Constitution." Story on the Constitution, sec. 880.

Tested by the foregoing, the reasoning of which is perfectly satisfactory to our minds, we conclude that the amendment to the bill under consideration, adopted in the Senate, was not an independent measure and did not convert it into a bill for raising revenue, in the sense of the Constitution. The controlling purpose of this bill was to provide for the creation and circulation of national bank notes as money under the sanction and guaranty of the United States. It conferred valuable franchises and privileges upon the banks organized thereunder to accomplish what was deemed a desirable purpose, and it was not unreasonable nor foreign to this general object to accompany them with a condition, by way of a tax or a charge or a duty, which would not only remunerate the Government for its trouble and expenses in connection therewith, but might also add something to its revenues by way of return for the benefits conferred. Provisions for the payment of fees and charges might well, and in fact usually do, form a part of every bill enacted for the purpose of enabling persons to organize private business corporations, especially where there may be an additional grant of valuable franchises.

There is no reasonable ground for holding that the Senate amendment was injected into the body of this bill without regard to its subject-matter and solely for the purpose of raising revenue. It is plain from the history of the bill, as disclosed by the journals of both houses, that it could not have been passed without
58 this incidental charge for the franchises and benefits conferred, and to say now that it shall stand with this feature stricken from it would be to thwart the object of Congress and do violence to its plain intention.

There was no error in the instruction to the jury to return a verdict for defendant, and the judgment thereon must be affirmed with costs to the appellee; and it is so ordered.

SETH SHEPARD,
Associate Justice.

(Endorsed:) No. 250. The Twin City National Bank of New Brighton, appellant, *v.* Enos H. Nebeker, appellee. Opinion. Court of Appeals, District of Columbia. Filed Apr. 16, 1894. Robert Willett, clerk.

59 Court of Appeals of the District of Columbia, April Term, 1894.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Appellant, *vs.* ENOS H. NEBEKER. } No. 250.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed, with costs.

Per MR. JUSTICE SHEPARD.

April 16, 1894.

60 Court of Appeals of the District of Columbia.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON
against
ENOS H. NEBEKER. } No. 250.

And now comes The Twin City National Bank of New Brighton, plaintiff herein, and says that on or about the — day of April, 1894, this court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore the plaintiff prays that a writ of error may issue in this behalf to the Court of Appeals of the District of Columbia for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

JOHN J. CRAWFORD,
Attorney for Twin City National Bank.

(Endorsed:) 250. Court of Appeals of the District of Columbia. Twin City Nat. Bank of New Brighton, pl't'ff in error, against Enos H. Nebeker, def't in error. Petition for writ of error. John J. Crawford, attorney for pl't'ff in error. Court of Appeals, District of Columbia. Filed Nov. 1, 1894. Robert Willett, clerk.

61 Court of Appeals of the District of Columbia.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON,
Plaintiff in Error,
against
ENOS H. NEBEKER, Defendant in Error. } No. 250.

And now comes the said Twin City National Bank of New Brighton, by John J. Crawford, its attorney, and says that in the record and proceedings in the above-entitled action there is manifest error in this, to wit:

First. That the court directed a verdict for the defendant in error.

Second. That the court admitted the testimony of the witness Rogers that the money paid to the defendant in error was covered into the Treasury and was applied to the payment of the semi-annual duty or tax of the plaintiff in error.

Third. That the court held that there was a statute of the United States which imposed a tax upon the circulating notes of the plaintiff in error.

Fourth. That the judgment of the supreme court of the District of Columbia in favor of the defendant in error was affirmed.

Fifth. That the said judgment of the supreme court of the District of Columbia was not reversed.

62 Sixth. That judgment was given for the defendant in error, whereas judgment should have been in favor of the plaintiff in error and against the defendant in error.

Wherefore the plaintiff in error prays that the judgment of the Court of Appeals of the District of Columbia and the judgment of the supreme court of the District of Columbia herein may be reversed, annulled, and altogether held for nothing, and that the plaintiff in error may be restored to all things which it has lost by reason thereof.

JOHN J. CRAWFORD,
Attorney for Plaintiff in Error.

(Endorsed:) 250. Court of Appeals of the District of Columbia. Twin City Nat. Bank of New Brighton, pl't'f in error, against Enos H. Nebeker, def't in error. Assignments of error. John J. Crawford, attorney for pl't'f in error. Court of Appeals, District of Columbia. Filed Nov. 1, 1894. Robert Willett, clerk.

63 In the Court of Appeals of the District of Columbia.

THURSDAY, *November 8th, A. D.* 1894.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON, Appellant, *vs.* ENOS H. NEBEKER. } No. 250.

On motion of Mr. Thomas L. Waters, attorney for the appellant in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed, and the amount of the bond on said appeal is fixed at the sum of five hundred dollars.

64 Know all men by these presents that we, The Twin City National Bank of New Brighton, appellant, as principal, and Frederick W. Pratt, of Washington, D. C., as surety, are held and firmly bound unto Enos H. Nebeker, appellee, in the full and just sum of five hundred dollars, to be paid to the said Enos H. Nebeker, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between the said "The Twin City National Bank of New Brighton," appellant, and Enos H. Nebeker,

appellee, a judgment was rendered against the said "The Twin City National Bank of New Brighton," and the said "The Twin City National Bank of New Brighton" having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Enos H. Nebeker, appellee, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said "The Twin City National Bank of New Brighton" shall prosecute — to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON. [SEAL.]
A. S. PRATT & SONS, *Attorneys.* [SEAL.]
FREDERICK W. PRATT. [SEAL.]

Sealed and delivered in the presence of—
H. W. HODGES.

Approved by—
R. H. ALVEY, *Ch. Justice.*

(Endorsed:) No. 250. Court of Appeals of the District of Columbia. The Twin City National Bank of New Brighton, appellant, *vs.* Enos H. Nebeker. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Nov. 19, 1894. Robert Willett, clerk.

65 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between The Twin City National Bank of New Brighton, appellant, and Enos H. Nebeker, appellee, a manifest error hath happened, to the great damage of the said appellant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of November, in the year of our Lord one thousand eight hundred and ninety-four.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—
——— ———.

66 UNITED STATES OF AMERICA, *ss:*

To Enos H. Nebeker, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein The Twin City National Bank of New Brighton is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 19th day of November, in the year of our Lord one thousand eight hundred and ninety-four.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 19th November, 1894.

A. A. BIRNEY,
Att'y for Enos H. Nebeker.

[Endorsed:] Court of Appeals, District of Columbia. Filed Nov. 19, 1894. Robert Willett, clerk.

67 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 66, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of The Twin City National Bank of New Brighton, appellant, *vs.* Enos H. Nebeker, No. 250, September term, 1894, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 10th day of December, A. D. 1894.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 15,751. District of Columbia Court of Appeals. Term No., 202. The Twin City National Bank of New Brighton, plaintiff in error, *vs.* Enos H. Nebeker. Filed December 18th, 1894.

167-196

Supreme Court of the United States.

No. 202.

THE TWIN CITY NATIONAL BANK OF NEW BRIGHTON,
Plaintiff in Error,

against

ENOS H. NEBEKER,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN J. CRAWFORD,
Counsel for Plaintiff in Error.

B. H. TYRREL, Printer, 74 Maiden Lane, N. Y.

Supreme Court of the United States.

THE TWIN CITY NATIONAL BANK
OF NEW BRIGHTON,
Plaintiff in Error,

vs.

ENOS H. NEBEKER,
Defendant in Error.

Brief for Plaintiff in Error.

STATEMENT.

This is a writ of error to the Court of Appeals of the District of Columbia. The action was assumpsit brought by the plaintiff in error to recover money paid under duress of goods.

The evidence of the plaintiff established the following facts :

The plaintiff, a national bank, went into liquidation in the manner provided by law, on the 23d of June, 1891 and on the 25th of August, 1891, deposited in the Treasury of the United States lawful money to redeem its outstanding notes as required by Section 5222 Rev. Stat. U. S. The defendant was then the Treasurer of the United States, and as such officer had possession of the bonds which the bank had deposited to secure its circulat-

ing notes. After making the deposit to redeem plaintiff's notes, the agent of the plaintiff made a demand upon defendant for the bonds. The defendant refused to deliver them, unless the plaintiff would make a return of the average amount of its notes in circulation for the period from January 1, 1891, to the date when said deposit of money was made, viz., the 25th of August, 1891, and pay a tax thereon. The agent of plaintiff then delivered to defendant a return of the average amount of its notes in circulation for the period from January 1 to June 30, 1891, and paid to the defendant $56.25, but at the same time protested that defendant had no authority to demand such tax, and delivered to him a protest in writing setting forth that in making such return and in paying such tax the plaintiff did not intend to admit the validity of such tax or defendant's authority to exact or collect the same: but made such return and payment solely for the purpose of procuring the possession of the United States bonds belonging to plaintiff, which defendant had refused to release until such return and payment made; that plaintiff protested that it was not liable to such tax or any part thereof; that defendant's action in the premises was wholly illegal and without authority of law, and that plaintiff would take such action to recover the money so paid or it might be advised (page 12). Plaintiff's agent then made another demand upon defendant for the bonds; but defendant refused to deliver them until a return should be made of the average amount of plaintiff's notes in circulation for the period from July 1st to August 25th, 1891, and paid a tax thereon. Plaintiff's agent then delivered such return to defendant and paid him $16.83, at the same time delivering to him a written protest in the same form as the one above mentioned (pages 12–13). *These transactions were with the defendant himself, and the money was paid to him in person.*

The journals of the House of Representatives and Senate

of the United States for the first session of the 38th Congress were put in evidence by plaintiff, from which journals it appears that the National Bank Act originated as a bill in the House of Representatives, and that when it passed the House of Representatives it contained no provision for a tax upon the national banks, or a tax upon any corporation or upon any individual or upon any property, nor contained any provisions whatever for raising revenue, and that all the provisions which appear to authorize the Treasurer of the United States to collect any tax on the circulating notes of national banks originated in the Senate by way of amendment to a House bill which contained no provisions whatever for any tax or for raising revenue, and was passed by the concurrence of the House in that amendment.

The only evidence for defendant was the testimony of one witness, who testified over the objection of plaintiff, that the money paid by plaintiff to defendant was covered into the Treasury, and was applied to the payment of the semi-annual duty or tax of the plaintiff. But it did not appear whether this was done before or after the action was brought. At the close of the case, counsel for plaintiff moved the Court to direct the jury to return a verdict for the plaintiff, which motion the Court overruled, and to which ruling counsel for plaintiff excepted.

Counsel for defendant then moved the Court to instruct the jury to return a verdict for the defendant, which motion was granted by the Court, to which ruling of the Court counsel for plaintiff excepted.

All the taxing provisions contained in the National Bank Act are found in the 41st Section of the act. That section is as follows:

SEC. 41. *And be it further enacted*, That the plates and special dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses

necessarily incurred in executing the provisions of this act respecting the procuring of such notes, and all other expenses of the bureau, shall be paid out of the proceeds of the taxes or duties now or hereafter to be assessed on the circulation, and collected from associations organized under this act. And in lieu of all existing taxes every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum each half year from and after the first day of January, eighteen hundred and sixty-four, upon the average amount of its notes in circulation, and a duty of one-quarter of one per centum each half year, as aforesaid, on the average amount of its capital stock beyond the amount invested in United States bonds; and in case of default in the payment thereof by any association, the duties aforesaid may be collected in the manner provided for the collection of United States duties of other corporations, or the Treasurer may reserve the amount of said duties out of the interest, as it may become due, on the bonds deposited with him by such defaulting association. And it shall be the duty of each association, within ten days from the first days of January and July of each year, to make a return, under the oath of its president or cashier, to the Treasurer of the United States, in such form as he may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and of the average amount of its capital stock beyond the amount invested in United States bonds, for the six months next preceding said first days of January and July as aforesaid, and in default of such return, and for each default thereof, each defaulting association shall forfeit and pay to the United States the sum of two hundred dollars, to be collected either out of the interest as it may become due such association on the bonds deposited with the Treasurer, or, at its option, in the manner in which penalties are to be collected of other

corporations under the laws of the United States; and in case of such default the amount of the duties to be paid to such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency, and upon the highest amount of its deposits and capital stock, to be ascertained in such other manner as the Treasurer may deem best: *Provided*, That nothing in this act shall be construed to prevent all the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under State authority at the place where such bank is located, and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State: *Provided, further*, That the tax so imposed under the laws of any State upon the shares of any of the associations authorized by this act shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the State where such association is located: *Provided, also*, That nothing in this act shall exempt the real estate of associations from either State, county or municipal taxes to the same extent, according to its value, as other real estate is taxed.

When the bill was in the House the following amendment was made, viz.: "Strike out all after line 9 to the end of Section 41, and insert in lieu thereof: 'And nothing in this act shall be construed to prevent the taxation by States of the capital stock of banks organized under this act, the same as the property of other moneyed corporations, for State or municipal purposes, but no State shall impose any tax upon such associations or their capital, circulation, dividends, or business at a higher rate of taxation than shall be imposed by such State upon the same amount of money capital in the hands of individual citizens of such State: Provided, That no tax shall be imposed on

any part of the capital stock of such association invested in the bonds of the United States deposited as security for its circulation."

(Pages 18-19.)

The words struck out by this amendment were as follows:

"And every organization under this shall pay to the Treasurer of the United States a duty of one per cent. each half year, from and after the first of April, in the year 1864, upon the maximum amount of their circulating notes during the six months; and in default of such payment the Treasurer of the United States is hereby authorized to retain one per centum of the amount of bonds required to be deposited as security for such circulation at each semi-annual payment of interest thereon; and such duty and the duties imposed by Congress from time to time shall be in lieu of all other taxes on such associations."

See original bill on file in office of Secretary of Senate.

In the Senate the following amendment was made: "In Section 41 strike out the following words: 'And nothing in this act shall be construed to prevent the taxation by States of the capital stock of banks organized under this act, the same as the property of other moneyed corporations, for State or municipal purposes; but no State shall impose any tax upon such associations or their capital, circulation, dividends, or business at a higher rate of taxation than shall be imposed by such State upon the same amount of moneyed capital in the hands of individual citizens of such State: Provided, That no State tax shall be imposed on any part of the capital stock of such association invested in the bonds of the United States deposited as security for its circulation,'

and in lieu thereof insert the following words, viz.: And in lieu of all existing taxes every association shall pay to the Treasurer of the United States, in the months of January and July a duty of one-half of one per centum each half year from and after the first day of January, eighteen hundred and sixty-four, upon the average amount of its notes in circulation, and a duty of one-quarter of one of one per centum each half year upon the average amount of its deposits, and a duty of one-quarter of one per centum each half-year as aforesaid, on the average amount of its capital stock beyond the amount invested in United States bonds; and in case of default in the payment thereof by any association, the duties aforesaid may be collected in the manner provided for the collection of United States duties of other corporations, or the Treasurer may reserve the amount of said duties out of the interest, as it may become due on the bonds deposited with him by such defaulting association. And it shall be the duty of each association within ten days from the first days of January and July of each year to make a return under the oath of its president or cashier to the Treasurer of the United States, in such form as he may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and of the average amount of its capital stock beyond the amount invested in United States bonds for the six months next preceding said first days of January and July, as aforesaid, and in default of such return and for each default thereof, each defaulting association shall forfeit and pay to the United States the sum of two hundred dollars, to be collected either out of the interest as it may become due such association on the bonds deposited with the Treasurer or at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States; and in case of such default the amount of the duties to be paid by such association shall be assessed upon the amount of notes

delivered to such association by the Comptroller of the Currency, and upon the highest amount of its deposits and capital stock, to be ascertained in such manner as the Treasurer may deem best: Provided, That nothing in this act shall be construed to prevent the market value of the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of all taxes imposed by or under State authority, for State, county or municipal purposes, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State. And all the remedies provided by State laws for the collection of such taxes shall be applicable thereto: Provided, further, that no tax shall be imposed under the laws of any State, upon the shares in any of the associations authorized by this act, at a rate exceeding that imposed upon the shares in banks organized under authority of the State where such association is located: Provided, also, That nothing in this act shall exempt the real estate of associations from either State, county, or municipal taxes to the same extent, according to its value, as other real estate is taxed."

Pages 31–32, 34.

To this amendment the House refused to agree.

Page 24.

Afterwards the matter went to a conference, and the amendment was agreed to by the House, with some changes in the provisions relating to State taxation.

Page 46.

Assignment of Errors.

The plaintiff in error makes the following assignment of errors :

First.—That the Court directed a verdict for the defendant in error.

Second.—That the Court admitted the testimony of the witness Rogers that the money paid to the defendant in error was covered into the Treasury, and was applied to the payment of the semi-annual duty or tax of the plaintiff in error.

Third.—That the Court held that there was a statute of the United States which imposed a tax upon the circulating notes of the plaintiff in error.

Fourth.—That the judgment of the Supreme Court of the District of Columbia in favor of the defendant in error was affirmed.

Fifth.—That the said judgment of the Supreme Court of the District of Columbia was not reversed.

Sixth.—That judgment was given for the defendant in error whereas judgment should have been in favor of the plaintiff in error and against the defendant in error.

I.

The proceedings on the passage of Section forty-one of the Bank Act were a violation of the requirement of the Constitution that all bills for raising revenue shall originate in the House of Representatives.

The Court of Appeals has very properly said that there are three propositions of law in this case, viz: (1) that the action is rightly brought against the defendant; (2) that the journals of the two Houses of Congress may be inspected, and (3) that the proceedings on the passage of Section forty-one of the National Bank Act were a violation of the requirement of the constitution that all bills for raising revenue shall originate in the House of Representatives, though it is submitted that the Court's mode of stating the last proposition is not correct. The first two propositions are of a preliminary nature; but as the Court has placed its decision on the third, it seems to be proper to change the natural order, and to discuss the main question first.

The first argument suggested by the Court is certainly not impressive. The point appears to be this—the bill at one stage in the House contained a revenue feature which was struck out by the House before the bill was sent to the Senate; and hence, the Senate, by virtue of its power of amendment, could add a similar provision, or in other words, could restore that provision somewhat modified. This makes the power of the Senate to act in revenue matters depend, not upon the action of the House, but upon the action of the individual member who happens to bring in the bill, or upon the action of the committee which reports it. Now, the constitutional provision must mean something

more than this. The reasons assigned for its adoption are various, but one of the reasons, and perhaps the principal reason, was this—that equal representation in the Senate being conceded to the smaller States, the power to originate revenue bills was committed to the House of Representatives where the larger States had the more numerous representation. But it would be no protection to the larger States, if one member or one committee, had power to "originate" the bill. The word "originate" evidently refers to the House as a body, and the bill has not "originated" until it has passed the House. When the House strikes out all revenue provisions, it determines that revenue shall not be raised, and such action is an affirmative declaration to that effect. If, then, the Senate can restore the revenue provision which the House has struck out, the prerogative of the House amounts to nothing. Again, how is the Senate to know whether it has jurisdiction of the subject of raising revenue. It must have some evidence upon which it can act. Surely no one would claim that the Senate can overhaul the records of the House for the purpose of learning whether in some stage of the bill it contained a revenue provision. The only evidence which the Senate has is the bill which it receives from the House, and from the nature of the case, this evidence must be final and conclusive.

As to the remainder of the opinion, the point appears to be this—that the amendment was proper because it was germane to the main purpose of the bill. But what possible application has that line of reasoning to this case? The only questions involved here are: Was the amendment designed to raise revenue? And had the Senate acquired jurisdiction of the subject of raising revenue? The question as to the amendment being germane, can become material (if at all) only after the jurisdictional question has first been settled. The point involved here was admirably stated in a report made to the Senate upon this

subject by Senators Matt. H. Carpenter and Allen G. Thurman. In such report it is said: "Unless the House of Representatives move in the matter, this House is commanded to be silent on the subject. But when the House of Representatives, by sending us a bill for raising revenue, present the subject for our consideration, the power of the two Houses is commensurate. If the House proposed to levy a tax upon tea, the Senate may amend the bill by adding coffee, or by striking out tea and substituting coffee, or any other article or articles. In other words, a bill from the House is necessary to give the Senate any jurisdiction over the subject of raising revenue, but when such bill is received from the House, the Senate may amend it in any respect or to any extent, or, to quote the Constitution, to such a bill the Senate may propose or concur with amendments. "*But it is evident that the Senate cannot propose an amendment raising revenue to any bill coming from the House, except a bill for raising revenue. For instance, if the House should send us a bill granting lands in aid of a railroad company, the Senate could not put upon it an amendment for raising revenue, because in such case, the bill, so far as it was a bill for raising revenue, would be originated in the Senate, which the Constitution forbids.*"

Senate Document 146, 2d Sesn. 42 Cong. (1872).

Now, in this case, if the bill had, for instance, laid a tax upon the State banks, the Senate might have added a tax upon the National banks, or might have struck out one and substituted the other; or if the bill had contained provisions taxing National banks, it might have added or substituted a tax on State banks, but as the bill laid no tax of any sort, either upon the National or the State banks, or upon anything else, the Senate had not acquired jurisdiction of the subject, and therefore, had no power to amend the bill by adding taxing provisions.

The cases cited by the Court were no doubt decided cor-

rectly, but they are not in point. In State *vs.* Wright (14 Oregon, 365), the decision was put upon the ground that the licenses required were not for the purpose of raising revenue, "but an exercise of the police power of the State for the purpose of regulating a business that is detrimental to the public morals." In Mumford *vs.* Sewell (11 Oregon, 67), the statute itself did not levy any tax, but merely provided that mortgages should be taxed as real estate. The Court said: "Some of us have considerable doubt whether the bill is not properly a bill for raising revenue, and therefore, in violation of Sec. 18 of Art. 4 of the State Constitution, because it originated in the Senate. But it is not sufficiently clear that a law which merely declares that certain property theretofore exempt from taxation, shall thereafter be subject to taxation, is strictly a law for raising revenue. We do not feel warranted, therefore, as at present advised, in declaring the law unconstitutional on this ground." In Dundee Mortgage Co. *vs.* Parrish (11 Sawyer, 92), where the same statute was under consideration, the ground of the decision was that the act itself did not lay any tax. The Court said: "It provides that when revenue is raised, mortgages shall contribute thereto as land. But it does not authorize or provide for levying any tax, or raising a cent of revenue." In Harper *vs.* Commissioners (23 Ga., 566), the act was one incorporating a town, and the point of the decision was that merely conferring upon the town power to impose taxes did not make the act one for raising revenue. The Court said: "The delegation of the power to tax, and the laying of a tax, are two things. This act does the first; the last it does not do. The constitutional provision applies to an act which does the last, and does not apply to an act which does the first."

It will be seen from this that the cases cited, as well as the opinion of Justice Story, are not authorities against the position of the plaintiff in error, but are in its favor. For they all recognize that a bill which levies a tax in the

strict sense of the term is a revenue bill within the provision of the Constitution.

Now, the Senate amendment provided for a semi-annual tax, not only upon the circulating notes, but also upon the capital stock and deposits. This tax was to be paid at regular intervals of six months; it was to be paid to the Treasurer of the United States; it was to go into the general funds of the United States, and could be used for any purpose the United States should see fit, and was to constitute a part of the revenue of the Government, just as any other tax did. It answers, then, to every description of a revenue bill within the authorities cited, and within all other authorities. Besides, it is to be noted that this tax is the same as that placed upon State banks by the Internal Revenue Act of the same session passed only a few days later.

Act, June 30, 1864, Section 110, 13 Statute, page 277.

See also debates on the bill, Cong. Globe, 1st Sess., 38 Cong.

See also letter from Secretary Chase, read in the Senate, Cong. Globe, page 2142.

It is quite true, as stated by the Court of Appeals, that a bill is not necessarily a revenue bill, because, as an incident to the main object, it may contain a provision for the payment of certain dues, license fees or special taxes. But this principle does not apply in this case. The tax could not have been designed as a regulation of the banking interests (as taxes for example on liquors are often a regulation of the liquor traffic) and the only possible purpose which could have been intended was to bring money into the treasury of the United States.

The first sentence of the section (which was not amended) directs that the expenses of the Bureau of the Currency should be paid out of the taxes on the circulating notes, and had the amendment been confined to a tax on the notes, there might be some ground for the conten-

tion that the main purpose was to provide for the expenses of administering the law. But while this sentence limited payment of expenses to the taxes on the circulating notes, the amendment provided for a tax, not only on the notes, but upon the capital stock and deposits as well; and obviously the tax on deposits and stock would amount to much more than a tax on the notes. There can, therefore, be no pretense that the entire tax, or the principal part thereof, was imposed for the purpose of paying expenses; and the only purpose for which the principal part of the tax could have been intended was for raising revenue. But it is impossible to separate the tax on the circulating notes from the tax on the capital stock and deposits; the amendment must stand or fall in its entirety, and if the tax on the capital stock and deposits was intended primarily to raise revenue, the amendment must be deemed a revenue provision, notwithstanding that as to the tax on the circulating notes, the intention may have been partly to provide for the expenses.

To consider this question in the light of the power of the Senate to amend, suppose the house had left in the bill the provision for taxing the notes of the National banks. could the Senate not have added a tax upon the notes of the State banks? Suppose the Senate in such case should have taken the view that to protect the National banks it was necessary to impose a like tax on the notes of the State banks, would their power to concur with such amendment have been doubted? or, if they wished to give the National banks a monopoly, could they not have added the tax of ten per cent. afterwards imposed on State bank issues? or if the House bill had imposed a tax on the capital stock and deposits of the National banks, could it have been doubted that the Senate might consider it a revenue bill and add a like tax upon the State banks? It is impossible to conceive of any valid objection that the House could have made to such

amendments. But if such a provision in the bill received from the House would have the effect of conferring upon the Senate jurisdiction of the subject of raising revenue, so that that body could add an amendment imposing a tax upon State corporations, clearly such provision is one which the House alone could originate in the first instance.

The Court of Appeals dwell upon the circumstance that the tax was reasonable. Now, whether it was reasonable to impose a tax is wholly immaterial here. The point involved is not as to the powers of Congress, but as to the powers of the respective Houses. The exclusive right of the House of Representatives to originate all tax measures is not dependent upon whether the tax is reasonable or unreasonable. Its power to determine whether any tax at all shall be imposed is absolute and uncontrolled; and it is not for the Senate to usurp this power whenever a tax may be reasonable, or in accordance with what is usual in such cases. Indeed, all taxes are supposed to be more or less reasonable, and more or less just; but, nevertheless, it is the privilege and duty of the House of Representatives to originate all such laws.

The statement of the Court that the bill could not have been passed without this amendment is mere conjecture. But what if it could not? Is the amendment to stand simply because the Senate would not have agreed to the bill without it? This would be a most mischievous doctrine. It would practically nullify the mandate of the Constitution; for then, in any case, the Senate, by simply holding out for its own amendments, could draw to itself the power which the Constitution reposes exclusively in the House of Representatives.

In its terms the provision of the Constitution is mandatory—"all bills for raising revenue *shall* originate in the House of Representatives."

The now universally aaccepted rule for construing con-

stitutional provisions of this character is that stated by Judge Cooley:

"The Courts tread upon very dangerous ground when they venture to apply the rules which distinguish directory and mandatory statutes to the provisions of a constitution. Constitutions do not usually undertake to prescribe mere rules of proceeding, except when such rules are looked upon as essential to the things to be done; and they must then be regarded in the light of limitations upon the power to be exercised. It is the province of an instrument of this solemn and permanent character to establish those fundamental maxims and fix those unvarying rules by which all departments of the government must at all times shape their conduct; and if it descends to prescribing mere rules of order in unessential matters, it is lowering the proper dignity of such an instrument and usurping the proper province of ordinary legislation. We are not, therefore, to expect to find in a constitution, provisions which the people, in adopting it, have not regarded as of high importance, and worthy to be embraced in an instrument which, for a time at least, is to control alike the government and the governed, and to form a standard by which is to be measured the power which can be exercised as well by the delegate as by the sovereign people themselves. If directions are given as to the times or mode of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only; and we impute to the people a want of due appreciation of the purpose and proper province of such an instrument, when we infer that such directions are given to any other end; especially when, as has been already said, it is but fair to presume that the people in their constitution have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers

delegated, and with a view to leaving as little as possible to implication."

Cooley's Constitutional Limitations, 94, 95, and cases cited.

In *Perry County* vs. *Railroad Company* (58 Ala., 546), where the precise question raised here was decided, the learned Chief Justice Stone said:

"We think the only safe rule for interpreting clauses of the Constitution which command certain things to be done, or certain methods to be observed in the enactment of statutes, is to hold that, when it is affirmatively shown by legal evidence that, in the attempt to legislate, some mandate of the Constitution has been disregarded, such attempt never becomes a law."

In that case it was held that a statute imposing a tax upon the railroads of the State never became a law because it had originated in the Senate. (*Perry County* vs. *Railroad Company*, 58 Ala., 546.) And in all other cases in which the question has arisen it has been assumed that this would be the effect of a non-compliance with the constitutional provision. (*Hooper* vs. *Commissioners*, 23 Ga., 566; *Dundee Mortgage Co.* vs. *Parish*, 11 Sawyer, 92; *Mumford* vs. *Sewall*, 11 Oregon, 67; *Rankin* vs. *City of Henderson* (*Ky.*), 7 S. W. Rep., 174.)

Nor is it any the less a "revenue" bill because the tax was imposed upon corporations chartered by the United States. Under the constant practice of the two houses since the organization of the government the power of the Senate to propose revenue amendments to a house bill has never depended upon the nature of the tax proposed by House, but simply whether any tax was proposed. And as stated in the report of the Senate Committee above referred to, the Senate may add, or substitute a tax upon anything else.

If the House should to-day send to the Senate a bill putting a tax on the capital stock and deposits of the National banks, it could not be doubted that the Senate could considerate it a revenue bill, and add a like tax upon the State banks. Whether or not revenue is to be raised is the question, and not whether it is proposed to raise it by taxing corporations of the general government or corporations of the State.

Or, to take an illustration from our State system of taxation: In Pennsylvania and New Jersey, for example (by the constitutions of both of which States bills raising revenue are to originate in the House), the bulk of the State revenue is raised by corporation taxes. Now, if in one of those States the House should send to the Senate a bill taxing domestic corporations, could it be doubted that it was a revenue bill, or that the Senate would have power to add a provision taxing foreign corporations? Or if the Senate should originate a bill laying a tax on domestic corporations, could it be doubted that such a bill would be a revenue bill?

Even if the tax is to be regarded as a franchise, or license tax—that it was imposed upon the theory of a consideration demanded for the powers and privileges granted by the act, still this cannot in any way effect the question as to the power of the Senate to originate it. In the report made by Senators Carpenter and Thurman, referred to above, the case put is one of a grant of lands to a corporation; but they say the Senate could not amend by adding a tax. It cannot be denied that a bill imposing a tax upon the real or personal property of corporations must originate in the House. Can it be that a different rule would apply merely because the tax was made a franchise or license tax? It requires no argument to show that such a construction would lead to grave complications, and to much friction and conflict between the two Houses.

And if it were that the Senate could originate measures for franchise or license taxes, then many bills intended to raise revenue could originate there. On this principal, the Senate could originate any bill imposing a tax on the Pacific railroads, or upon the street railroads or other railroads in the District of Columbia, or upon any corporation doing business there, or upon settlers upon the public lands—in short, upon any person or corporation exercising any privileges or rights in pursuance of any statute or authority of the United States. And when such principle came to be applied in the States it would render the constitutional provision in the State constitutions largely nugatory. It would have practically no application to corporation taxes, for the modern method is to make nearly all taxes on corporations either franchise or license taxes.

This is now a favorite mode of raising revenue; and, in many instances, these taxes form a very large part of the State revenue.

But the well established rule is that constitutional provisions, being permanent in their nature, are not to receive a construction that will render them obsolete, but such as will meet the changing conditions of business and society.

Nor can it make any difference that the provisions were added to a bill conferring the franchises, because Congress has the power to repeal the Act at will, and a continuance of the franchises would be quite as much a consideration for the tax as the original grant.

II.

The Journals are competent evidence, and the highest evidence, in this case; and as the enrolled bill affords no evidence of the fact sought to be shown by the journals, they may be examined.

In the case of *Gardner* vs. *Collector* (6 Wall., 499, 511) this Court said:

"We are of opinion, therefore, on principal as well as authority, that whenever a question arises in a Court of law, of the existence of a statute, or of the time when a statute took effect, or of the precise terms of a statute, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question, always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule."

There is nothing in the decision in *Field* vs. *Clark* (143 U. S., 649) which is in conflict with these views. In that case it was held that "it is not competent to show from the journals of either house, from the reports of committees, or from other documents printed by authority of Congress, that the bill as finally passed contained a section that does not appear in the enrolled act in the custody of the State department."

That is all that is decided by that case.

The Court, after admitting the correctness of the general proposition that a bill does not become a law until it has in fact been passed by Congress, said: "But this concession of the correctness of the general principle for which the appellants contend does not determine the precise question before the Court; for it remains to inquire

as *to the nature of the evidence upon which a Court may act* when the issue is made as to whether a bill originating in the House of Representatives or the Senate, and asserted to have become a law, was or was not passed by Congress."

Now, giving the fullest scope to the line of reasoning in that case, the rule is, that when an act is duly enrolled and attested by the signature of the presiding officers of both houses, and is indorsed with the approval of the President, and is filed in the office of the Secretary of State, that is conclusive evidence that the act, as so enrolled, is the act passed by Congress, and that the contrary cannot be shown by the journals. But all cases of that kind are attempts to impeach and overthrow the evidence afforded by the signatures of the presiding officers and the President. *There is no intimation that resort can not be had to the journals to establish a fact which does not contradict anything imported by the signatures to the act.* Such signatures import no more than that the act was passed by both Houses, and that as so enrolled it is the identical act which was passed. By no stretch could such authentication be made to mean that this particular constitutional form was observed. If a bill is passed and properly enrolled, the presiding officers are bound to sign it; neither could withhold his signature because of the failure to comply with this requirement of the constitution. And by signing it he could not be deemed to certify to such matter. Besides, the question will often be one of law, as in this case; and to give his signature any such effect would make him the judge of the law, as well as the of the facts.

The attempt in this case, then, is not to impeach the evidence afforded by the enrolled act and the signatures thereto; but to show a fact of which these are not evidence at all. Of all those matters of which the enrolled act is evidence, it is admitted to be conclusive evidence.

But facts of which the enrolled bill affords no evidence whatever, it is claimed may be shown by the journals.

That this may be done has been held in a number of cases.

In *Ex parte Wren* (63 Miss., 512), where it was held that the enrolled act is the sole exposition of its contents, and the conclusive evidence of its existence according to its purport, it was said: "Undoubtedly the journals may be evidence, and may be resorted to in some cases, and must be as to some matters. They were properly looked to in Gardner *vs.* Collector, 6 Wall, 499, in the effort to fix the date of approval of a bill by the President. They must furnish the evidence that a bill returned by the governor without his signature and with his objections was so dealt with as to become a law, for it is only by the approval by two-thirds of both houses, determined by yeas and nays entered on the journal of each house, that such a bill can become a law, and as the constitution so provides, and has not prescribed any means of attesting or authenticating the concurrence of those requisites to such a bill becoming a law, it rests necessarily on the journals which must show that, although the bill was not signed by the governor but returned with objections, it nevertheless became a law according to the constitution. The case is peculiar and extraordinary, and not governed by the rules applicable to the ordinary case where the governor signs the bill. The provisions for the signing of bills by the presiding officers does not apply here, and whether the bill on reconsideration became a law may depend on those things prescribed, and which cannot be shown except by the journals of both houses. *Had the Constitution provided any means of authentication of such action by the two houses to make a bill returned by the Governor with his objections a law, it would have been exclusive, but in the absence of such provision the journals are the memorial of the action which converts a bill returned by the Governor with his objections into a law.*"

The point involved here is well illustrated by a case in New York. The Constitution of that State prohibited the Legislature passing private or local bills relating to the "selecting, drawing, summoning or impaneling grand or "petit jurors," except in cases where such bill is reported by a commission appointed to revise the statutes. In the case referred to it was held that it was proper to look to the journals to see how the bill had originated, and it having originated simply as an ordinary bill, the act, so far as it related to grand jurors, was held to be invalid. The Court said: "*The proof offered did not contradict any fact asserted on the face of the statute, nor so far as appears in any legislative record. On the contrary, the offer was to show by the journal of the Legislature, and by the original act, the facts averred in the plea.*"

People *vs.* Petrea, 92 N. Y., 139.

A similar principle has been acted upon in the same State, in what are known as two-thirds acts, that is, bills which are required to be passed by a two-thirds vote. A statute of the State requires the fact that such bills were passed by such a vote, to be certified by the presiding officers of both houses; and where such certificate, in due form, is made, it is conclusive (Rumsey *et al. vs.* N. Y. & N. E. R. R. Co., 130 N. Y., 88, 92; People *vs.* Devlin, 33 N. Y., 269). But where there is no certificate, or where the certificate is defective, the journals of the Legislature are examined to ascertain the fact, and if it then appears that the law was not passed by a two-thirds vote, it is declared invalid.

People *ex rel.* Adsit *vs.* Allen, 42 N. Y., 378.
People *ex rel.* Purdy *vs.* Commissioners, 54 N. Y., 276.
See also Rumsey *vs.* N. Y. & N. E. R. R. Co., 130 N. Y., 88.

People *vs.* Purdy, 2 Hill, 31–34; 4 Hill, 384.
New York & Long Island Bridge Co. *vs.* Smith, 148 N. Y., 540, 546.

The same rule was adopted by the Supreme Court of North Carolina in the late case of *Union Bank* vs. *Commissioners of Town of Oxford* (25 S. E. Rep., 966). That case arose under a constitutional requirement that bills creating a public indebtedness should be read three several times in each house, and that the yeas and nays should be entered in the journal. It was held that while the certificate of the Speaker was conclusive that the act had passed—and that such certificate was "good for all it certified," yet that the journals might be examined as to the facts not disclosed by the certificates.

Let it be admitted, for the purposes of argument, that if the Constitution, or even a statute, provided a means of authenticating the fact of the compliance with this provision of the Constitution, such evidence would be conclusive, yet, until there is some such evidence, the journals must afford the most appropriate and the highest evidence of the fact.

Upon the original act on file in the office of the Secretary of State appears this indorsement: "I certify that this act originated in the House of Representatives, attest Edward McPherson, Clerk." Remembering, however, that the fact as stated in such certificate is not disputed, let us see what, if any, force such certificate has as evidence. By whose direction is it made? By what authority? Neither any provision of the Constitution, nor any statute authorizes or requires the clerk to so certify. Such certificate does not appear to have been made in pursuance of any general or special direction of Congress. It is nothing more than the voluntary statement of the clerk, made upon his own motion. And how, and when, was it made? Probably not in open session, as acts are signed

by the presiding officer, but more likely in private. Nor does it appear when it was made, whether immediately after the passage of the act, or some days thereafter. And how did he know the fact? He cannot be presumed to know personally the origin of all the bills coming before the House. He must ascertain the fact from the records; and the very best evidence accessible to him is the journal itself. In the absence of an express statute, his certificate based upon the records of the House, cannot be higher evidence than those records themselves.

And certainly, no one could give evidence of this character preference over the journals, which are required by the Constitution to be kept; in which the entries are made at the time the action is taken, which are read over and formally approved by the respective houses, and are published as authentic records of the proceedings of Congress.

But in this case it is not disputed that the clerk's certificate, so far as it goes, is true. The bill did, in fact, originate in the House of Representatives; but it did not originate there as a *revenue bill*. So far as it was a *revenue bill* it originated in the Senate. So, if the clerk's certificate is to be taken as conclusive as to the fact stated, it does not preclude the inquiry suggested here, unless the Court will go to the extent of holding that the certificate is absolute and final evidence that the Constitutional provision was, in all respects, complied with. But in this case that is a question of opinion—a question of law, as well as of fact; and certainly the Court is not precluded from deciding that question by what the clerk of the House of Representatives may think about it.

As, then, the journals are competent evidence, and the highest evidence of the fact, and it is not sought to contradict by them any other legislative record, they must be examined as to the fact, unless the Court will go so far as to say that there is an absolute, arbitrary, irrebuttable

presumption that this provision of the Constitution was conformed to.

In this connection the observations of the Court of Appeals of New York are very pertinent:

"The Constitution would afford very slight protection against legislative usurpation, and the object sought to be accomplished by the amendment in question, could be easily frustrated, if the mere fact that the Legislature had passed a local or private bill in one of the enumerated cases, created a conclusive presumption that the bill was originally reported by Commissioners, and within the exception of Section 25."

People *vs.* Petrea, 92 N. Y., 128, 139.

In *Field* vs. *Clark* this Court regarded the matter as a question of evidence. And so it has been considered in all other cases.

As said by the Supreme Court of Pennsylvania: "As will appear from an examination of the cases in which this question has been discussed, it has always been considered, and in the nature of the case it is a question of evidence, and must be determined upon the principles which apply to that branch of the law."

Commonwealth *vs.* Martin, 107 Pa. St., 185, 190.

Public convenience and a due respect for a co-ordinate branch of the government may require that the enrolled bill shall be accepted as evidence of all facts of which it purports to be the evidence; and that in the absence of indisputable evidence it must be assumed that Congress has acted in conformity to the constitution; but these considerations do not require the Court to establish an absolute presumption not to be rebutted by any evidence whatever, no matter how high.

It would be preposterous that the judiciary, a co-ordi-

nate branch of the government, charged with the duty of enforcing the laws, which Congress has power to make only in pursuance of the Constitution, should, when called upon to enforce such a law, be bound to be ignorant of the fact that in the passage of the act a constitutional provision had been violated, when this fact could be known to every citizen by uncontradicted and indisputable evidence. And that such presumption would, in many cases, be contrary to the actual facts, is shown by some of the cases above cited.

Suppose, now, that the rule should be adopted that where there are certain forms to be complied with in the passage of particular kinds of acts, the Court will not in any case look into the evidence of the fact, but will presume such compliance. What would be the consequences? Why, this—that all such constitutional provisions would become, at the best, merely directory, and we know that when they become directory, they become practically nugatory. They are violated in the first instance, perhaps, honestly, through mistake or inadvertence. But such action forms a precedent for another breach, and so one case follows another until the requirement is entirely lost sight of. This is illustrated by what happened in New York with respect to bills making appropriations for local purposes. By the constitution of the State, such bills are required to be passed by a two-thirds vote; but a practice had in some way grown up of wholly disregarding this requirement; and when the question was finally presented to the Courts, it was seriously argued by very eminent counsel, that by a legislative construction which had existed for many years, the two thirds vote requirement did not apply to bills of this character. And it was not until the Court refused to give effect to a law passed in violation of this constitutional provision, that it became of any binding force on the Legislature.

People *ex rel.* Adsit *vs.* Allen, 42 N. Y., 378.

In Field *vs.* Clark, this Court said: "We recognize the duty of this Court from the performance of which it may not shrink to give full effect to the provisions of the constitution relating to the enactment of laws that are to operate wherever the authority and jurisdiction of the United States extend."

But this the Court could not do, if it should establsh an arbitrary presumption in favor of the validity of the act, which no evidence, no matter of high a character, could overthrow.

III.

The provisions in the Revised Statutes have no more force or effect than in the original statute.

If the foregoing propositions are correct, then it follows that on the first day of December, 1873, there was no statute in force laying a tax on the circulating notes, capital stock and deposits of national banks. The attempted enactment was a mere nullity; it had no more force than if it had been incorporated in a bill that had never been passed at all. There was, then, only one way in which it could become law. It had to be enacted; and then it became law, not as a vitalized statute, but as a new enactment. And not only did it have to be enacted as a new law, but it had to be enacted in the mode prescribed by the Constitution for laws of this class. It had to originate as a bill in the House, or by way of amendment in the Senate to a *revenue* bill.

These requisites were not complied with when the provisions were carried into the Revised Statutes.

The Revised Statutes are a revision and consolidation of the old statutes, not an enactment of new.

Doyle *vs.* Wisconsin, 94 U. S., 50, 52.
Meyer *vs.* Car Company, 102 U. S., 1.

They were intended as a legislative declaration of what the law was on the 1st day of December, 1873.

United States *vs.* Bowen, 100 U. S., 513.

By Section 5595 of the Revised Statutes it is provided: "That the foregoing seventy-three titles embrace the Statutes of the United States, general and permanent, in their nature in force on the 1st day of December, 1873, as revised and consolidated by commissioners appointed under an Act of Congress, and the same shall be designated and cited as the Revised Statutes of the United States."

By this language it was clearly not intended to make anything the law which was the notlaw on the date named. And it has been so decided.

The law disqualifying persons who had served in the Confederate Army to act as grand jurors had been repealed prior to December 1, 1873, but through a mistake had been incorporated into the Revised Statutes. It was held that it was not the law of the United States. The Court said:

"It certainly cannot be maintained that this language enacts or re-enacts anything as law which was not the law on the 1st day of December, 1873. The seventy-three titles were supposed to embrace the laws of the United States, general and permanent in their nature, but if they contained anything which was not law on the 1st day of December, 1873, its introduction into the Revised Statutes, be it by mistake or otherwise, cannot and does not, make it the law. The test of the matter is, was it the law on the 1st day of December, 1873? If not, this language does not re-enact it. The object was to consolidate and simplify

the law, and the enactment of the Revised Statutes was not the enactment of a body of laws as original legislation, but was the enactment of a more convenient expression of the law as it existed on the 1st day of December, 1873. To determine how, and in what mode the law shall be designated and cited is a very different thing from enacting laws, and the law shows it was not the latter but the former which Congress did when it adopted the Revised Statutes."

United States *vs.* Moore, 7 Rep., 198.

Again, while the Revised Statutes are a compilation of the law in force on December 1, 1873, they were not actually passed until nearly seven months afterwards, viz., June 22, 1874. In a case where it was claimed that an invalid act had been vitalized by a subsequent law, the Supreme Court said: "The Legislature could not thus, in 1869, give validity to a void act as an act passed in 1857, which was not constitutionally passed in that year; for that would be an evasion of the constitution. It could at most give it vitality as a new act from the date of the Act of 1869."

Town of South Ottawa *vs.* Perkins, 94 U. S., 260, 270, per Bradley, J.

So, here, it would be an evasion of the Constitution for Congress in June, 1874, to declare that this was a valid act on the 1st of December, 1873. It could give it vitality only from the time that it was properly enacted, that is from June, 22, 1874. But the Revised Statutes were not intended to take effect as new legislation from the date of their passage. They are simply a legislative declaration of what the law was on an antecedent date.

In re Oregon Bul. Co., 3 Sawyer, 614.

Re Leavenworth Savings Bank, 3 Cent. L. J., 207.

Nor could they have been intended as *new legislation* to take effect retrospectively; for they contained all the criminal laws, and they might thus have been objectionable as *ex post facto* laws.

Furthermore, in order to give these provisions effect as new law, they had to be included in a *revenue* bill; and a bill intended as a *revenue* bill. The Revised Statutes when passed by the House and sent to the Senate were never intended to have this character. It was never designed that they should have the effect of conferring upon the Senate jurisdiction of the subject of the revenue; and the Senate did not so understand them. Yet such would have been their effect if they were to give new force and effect to a revenue provision which had never been law before.

IV.

The defendant having had no authority to exact the money, he became personally liable for the same.

It will be remembered that the money was paid to the defendant *in person*, and that it was paid to him in order to get possession of the bonds belonging to the plaintiff. If, then, he had no authority to exact the tax, he became personally liable for the money so paid to him.

The decisions on the question both in the State and Federal Courts are very numerous. It will be sufficient to refer to a few of them.

In *Ripley* vs. *Gelston* (9 Johns., 201), it was held that an action of assumpsit would lie against the Collector of the Port of New York for illegal tonnage duties collected by him from the plaintiff under duress of goods.

In *Otis* vs. *Walker* (11 Wheat., 192; 2 Wheat., 18; 6 Wheat., 583), an action of trover was held to lie against a collector of customs for wrongfully withholding the property of the plaintiff.

Tracy vs. *Swartwout* (10 Peters, 80) was likewise an action of trover against a collector of customs. In that case the importer had offered to comply with the law by giving bond for the lawful rate of duties; but the collector demanded a greater bond, and refused to deliver the goods. It was held that the collector was liable for conversion of the goods, though he had acted under the instructions of the Secretary of the Treasury.

In *Elliott* vs. *Swartwout* (10 Peters., 80), it was held that an action of assumpsit would lie to recover money paid to a collector of customs to procure the release of goods on which the collector had demanded an illegal tax.

Bates vs. *Clark* (95 U. S., 204), was an action of trespass against a captain and a lieutenant of the army who had seized a stock of liquors. The defendants pleaded their official character; that the place where the seizure was made was Indian country; that they had seized the whiskey in accordance with the act of Congress, and had delivered it to the marshal of the United States, under a writ from the proper Court on a proceeding instituted by the United States District Attorney. But it was held, that as the place was not Indian country, the seizure was illegal, and the defendants were liable.

So in *Mitchell* vs. *Harmony* (13 How., 115), it was held that an action of trespass would lie against an army officer, though he had acted under the orders of his superior officer.

In *Brown* vs. *United States* (6 Ct. Claims, 171), the Court of Claims was of the opinion that an action would lie at the suit of an individual against the Secretary of the Treasury for refusing to pay a judgment of the Court of Claims in his favor.

Not only have personal actions been maintained against officers of the United States, but even actions for the recovery of real property claimed to be held by them as agents of theUnited States.

In *Wilcox* vs. *Jackson* (13 Peters, 498), it was held that an action would lie against an army officer to recover, among other things, a fort which had been in the occupation of the United States for thirty years. and which was then occupied by an officer of the Army of the United States, and his command.

So, in *Grisar* vs. *McDowell* (16 Wall., 363), there was a recovery of property held by the defendant as an officer of the United States, and which had been set apart for military purposes.

In *United States* vs. *Lee* (106 U. S., 199), the action was ejectment to recover the property known as Arlington and used by the United States as a military station and cemetery. The defendants being sued individually as trespassers, set up their authority as officers of the United States; but it being found that the plaintiff had not been properly divested of his title, the officers were held liable as trespassers, and turned out of their unlawful possession.

So actions have been frequently maintained against State officers in cases where they claimed to have acted as such officers and under the authority of the State.

In the leading case of *Osborn* vs. *Bank of the United States* (9 Wheat., 738), the Treasurer of the State was ordered to restore to plaintiff money which had been seized for taxes claimed to be due the State, and the fact that defendants were all officers of the State, and had done the acts in their official capacity and in obedience to a State law, was held no ground for depriving the Court of jurisdiction.

In *Davis* vs. *Gray* (16 Wall., 203), the defendants who were officers of the State, one of whom was Governor, were restrained by injunctions from delivering patents to land in violation of the rights of the plaintiff.

In *Poindexter Greenhow* (114 U. S., 270), it was held that an action or suit brought by a taxpayer, who has duly tendered coupons in payment of his taxes, against the person, who under color of office as collector, and acting in the enforcement of a void law, passed by the Legislature of the State, having refused such tender of coupons, proceeds by seizure and sale of the property of the plaintiff, to enforce the collection of such taxes, is an action or suit against him personally as a wrongdoer, and not against the State. It was contended for the defendant in this case that he was an officer and agent of the State, engaged in collecting its revenue, under a law of the State, and that he acted only in an official capacity, representing the State, that in refusing to receive the coupons tendered, he simply obeyed the commands of his principal whom he was lawfully bound to obey, and that if any wrong had been done the State alone was responsible. But it was held that as the statute under which he had acted was unconstitutional, it afforded him no protection, and he was liable individually as a trespasser. The Court said: "The defendant had no authority of law thereafter to enforce other payment by seizing his [the plaintiff's] property. *In doing so he ceased to be an officer of the law, and became a private wrongdoer.*"

The theory of the law is that the defendant is not sued "as, or because he is, the officer of the government; but as an individual, and the Court is not ousted of jurisdiction because he *asserts authority as such officer. To make out his defense, he must show that his authority was sufficient in law to protect him.*"

Cunningham vs. *Macon, etc., R. R. Co.*, 109 U. S., 446, per Miller, J.

Poindexter vs. *Greenhow*, 114 U. S., 270, 287.

The principle is thus stated by Justice Matthews:

"A defendant sued as a wrongdoer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him, cannot rest on the bare assertion of the defense. He is bound to establish it. The State is a political corporate body, can act only through agents, and can command only by laws. It is necessary, therefore, for such a defendant, in order to complete his defense, to produce a law of the State which constitutes his commission as its agent, and a warrant for his act. This the defendant, in the present case, undertook to do. He relied on the act of January 26th, 1882. * * * The State has passed no such law, for it cannot; and what it cannot do, it certainly, in contemplation of law, has not done. * * * *He stands, then, stripped of his official character; and confessing a personal violation of the plaintiff's rights, for which he must personally answer, he is without defense.*"

Poindexter vs. *Greenhow*, 114 U. S., 288.

The same Judge in a subsequent case said: "A broad line of demarcation separates from such cases as the present, in which the decree required affirmative official action on the part of the defendants, the performance of an obligation which belongs to the State in its political capacity, those in which actions at law or suits in equity are maintained against defendants, who, while claiming to act as officers of the State, violate and invade the personal and property rights of the plaintiff under color of authority unconstitutional and void."

Hagood vs. *Southern*, 117 U. S., 52, 70.

In another case it is said by Justice Miller: "In actions at law, where an individual is sued, as for injuries to person or property, real or personal, or in regard to a duty which he is personally bound to perform, the government

does not stand behind him to defend him. If he has the authority of law to sustain him in what he has done, like any other defendant, he must show it to the Court, and abide the result. In either case, the State is not bound by the judgment of the Court, and generally its rights remain unaffected. It is no answer for the defendant to say I am an officer of the government and acted under its authority, unless he show the sufficiency of that authority."

Cunningham vs. *Macon, etc., R. R. Co.*, 109 U. S., 446, 456.

In another case, the same learned Judge said: "While acceding to the general proposition that in no Court can the United States be sued directly by original process as a defendant, there is abundant evidence in the decisions of this Court that the doctrine, if not absolutely limited to cases in which the United States are made defendants by name, is not permitted to interfere with the judicial enforcement of the established rights of plaintiffs when the United States is not a defendant or a necessary party to the suit."

United States vs. *Lee*, 106 U. S., 207, 208.

Upon the trial, a witness for the defense was permitted to testify, over the objection of counsel for plaintiff, that the money paid defendant by plaintiff was covered into the Treasury of the United States. *But it does not appear when this was done, whether before or after the action was brought.* Certainly, if a defendant would defeat an action for money had and received by showing a payment to another, he must show that such payment was made before the action was brought. But it is settled beyond question that where money is exacted by one *colore officii*, under duress of goods, and is paid under protest, it is no defense to him that he has paid the money over before the action.

In *Snowden* vs. *Davis* (1 Taunt., 359), it was held that the action for money had and received lies to recover back money which has been obtained through compulsion, under color of process by an excess of authority, although it has been paid over. Lord Mansfield said: "Can it in this case be said with any propriety, that the money was paid to the baliff for the purpose of paying it to the sheriff, or to the intent that the sheriff might pay it into the exchequer? The plaintiff pays it under the terror of process, to redeem his goods, not with an intent that it should be delivered over to any one in particular."

In *Ripley* vs. *Gelston* (9 Johns., 201), it was held that such an action would lie against a collector of customs to recover illegal taxes exacted by him, though he had paid such money over to the United States before the action brought.

The same rule was sustained by the Supreme Court of the United in *Elliott* vs. *Swartwout* (10 Peters, 80), where *Ripley* vs. *Gelston* was cited with approval.

In *Maxwell* vs. *Griswold* (10 How., 242, 256), which was likewise an action assumpsit against a collector of customs to recover money paid to obtain possession of goods, the Court said: "The money was thus obtained by a moral duress, not justified by law, and which was not submitted to by the importer, except to regain possession of his property withheld from him on grounds manifestly wrong. Indeed, it seems sufficient to sustain the action, whether under the act of February 26, 1845, *or under principles of the common law*, if the duties exacted were not legal, and were demanded and paid under protest."

In *Ogden* vs. *Maxwell* (3 Blatch., 323, 324), it was said: "It is not necessary to the maintenance of a civil action for the recovery of money wrongfully collected, that any turpitude should be proved against the officer. The suit in no way rests on any illegal purpose of the defendant in exacting the payment. It is well sustained, in his official

power was exercised in the collection, without warrant of law. (*Maxwell* vs. *Griswold*, 10 How., 242.) *The payment was compulsorily obtained from the plaintiffs in this instance, and they are entitled to charge the Collector with the amount, notwithstanding he received it for and paid it to the Government.* (*Ripley vs. Gelston*, 9 Johns., 201.) Any charges or costs illegally exacted by an officer *colore officii*, may be recovered back from him by the common law action of *indebitatus assumpsit*. (*Clinton* vs. *Strong*, 9 Johns., 370.) * * * We do not think that the Act of February 26th, 1845 (5 U. S. Stat. at Large, 727), applies to exactions of this character. The terms of that act, requiring notice in writing to be given to the Collector of objections made to payments exacted by him, are expressly confined to duties paid. *In all other respects, the parties stand upon their common law rights and liabilities; and under those, the action in this case well lies, although the fees collected by the defendant were paid into the Treasury before suit was brought* (*Ripley* vs. *Gelston*, *ubi supra*)"

In *Wood* vs. *Stirman* (37 Tex., 584), it was held that, where a county treasurer had collected taxes without authority of law, he alone was responsible for that illegal act, and the county was not responsible to the person from whom such money was collected, notwithstanding he had paid the same into the county treasury, to be disbursed as other funds of the county.

Rheel vs. *Hicks* (25 N. Y., 289, 293), was an action of assumpsit against a county superintendent of the poor to recover money paid under a mistake. The money had been paid by the plaintiff for the support of an unborn bastard; but, it appearing that the woman who had charged plaintiff as the father of her child was not in fact pregnant, it was held that there could be a recovery; and that it was no defense to the defendant that he had paid the money into the county treasury. The Court said:

"When it was ascertained that the woman had not been pregnant, and that all parties had acted under a complete mistake of the fact, as the defendant would no longer hold the money for the original purpose, he simply held it for the plaintiff. He had then no more right to pay the money to the county, or place it in the poor fund, than he would have had to bestow it on any charitable object. If this action will lie at all, *it cannot be defeated by the voluntary transfer of the money by the defendant after the cause of action had accrued.*"

See also *Kimball* vs. *Corn Exchange Bank*, 1 Ill. App., 209, 216.

The money was paid by the plaintiff for the purpose of getting possession of its property, and at the time of the payment protest was made that the action of defendant was illegal, that the money was paid merely to get possession of the property, and that an action would be brought to recover it. This constitutes payment under duress within all the authorities.

Maxwell vs. *Griswold*, 10 How., 242; *Swift* vs. *United States*, 111 U. S., 22; *Robertson* vs. *Frank Bros.*, 132 U. S., 17.

V.

This Court has Jurisdiction.

By the act establishing the Court of Appeals of the District of Columbia, it is provided as follows:

"That any final judgment or decree of said Court of Appeals may be re-examined, affirmed, reversed or modified by the Supreme Court of the United States, upon writ of

error or appeal, in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as heretofore provided for in cases of writs of error on judgment or appeals from decree rendered in the Supreme Court of the District of Columbia; and also in cases, *without regard to the sum or value of the matter in dispute*, wherein is involved the validity of any patent or copyright, or *in which is drawn in question the validity of a treaty or statute or of an authority exercised under the United States* (Act of February 9, 1893; Section 8).

The language of this provision is the same as that of the statute of 1885, regulating writs of error and appeals from the Supreme Court of the District of Columbia; and under that statute it was held that this Court had jurisdiction whenever the validity of the statute or authority were controverted, irrespective of the conclusion reached.

Baltimore & Potomac R. R. Co. *vs.* Hopkins,
130 U. S., 210, 222.

In the case at bar the record shows that there was drawn in question a statute of the United States and an authority claimed to be exercised under the United States; and, hence, the jurisdiction of this Court is clear, though the amount involved is less than five thousand dollars.

VI.

As there can be no recovery for taxes heretofore paid, and as the tax now tends to prevent the banks from performing the public functions for which they are primarily established, and as the officers charged with the duty of enforcing the law, including the president, have recommended that the tax be reduced to a nominal amount, no public inconvenience could result from declaring it void.

There is no principle of law better settled than that taxes paid voluntarily cannot be recovered, notwithstanding the statute under which they were collected is afterwards declared void. Hence, in this case, the effect of a decision against the validity of the tax could be only prospective. And as the objection does not go to the power of Congress to lay such a tax, Congress could immediately reimpose it, should it see fit to do so.

In the report of the Comptroller of the Currency for the year 1895, that officer says :

"The issuing of circulating notes to the par value of bonds deposited to secure the same *and the reducing of the per cent. of semi annual tax levied upon such notes has been urged by all the Secretaries of the Treasury who have touched upon the subject at all and by every Comptroller from the time of and including Comptroller Knox.* The provision of the law prohibiting the former and the provision of the law governing the amount of the latter, however, are still unchanged upon the statute book."

"At a time when the desire is so frequently expressed

that there be a larger issue of bank notes and complaint is made that national banks are indifferent to the note-issuing function vested in them, it may well be considered by Congress whether it would not be wise to do that which will make it of sufficient interest to the national banks to pay greater attention to note issues. The profit of banking in the United States is now largely in the deposit feature of it and thus it is of greater concern under existing circumstances to the banks to secure deposits than it is to issue notes upon a return so small as to scarcely justify the expense and trouble entailed thereby."

"Banks are not elemosynary institutions, and therefore engage only in that which promises a margin of profit. While on the other hand entitled to no more favors than are granted to other corporations or enterprises carried on by associated individuals, on the other they should not be denied any privileges which they may justly claim, and for the denial of which no possible excuse can be given. *It is unquestionably true that national banks would largely increase their note circulation if the embarrassment arising from* the needless locking up of a large part of their capital, available for other purposes *and the lessened profit through excessive taxation now imposed did not confront them.* (Report of Comptroller of the Currency, 1895, p. 22.)"

The recommendation of the Comptroller was that the tax be reduced to one-quarter of one per cent. per annum, instead of one per cent., as at present. This same recommendation was embodied in the *President's message to Congress* in that year. It is renewed in the Comptroller's report for the year 1896.

In view of such recommendations as this, urged year after year by the officers charged with the duty of enforcing the law, and in view of the fact that the President has deemed the matter of sufficient importance to call for a recommendation from him, it appears to be a case where

technical objections to the validity of the statute may be justly and properly made.

VII.

The judgment of the Supreme Court of the District of Columbia, and the judgment of the Court of Appeals should be reversed.

JOHN J. CRAWFORD,
Counsel for Plaintiff in Error.

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Office Supreme Court, U. S.
FILED
MAR 30 1897
[illegible] MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE TWIN CITY NATIONAL BANK OF New Brighton, plaintiff in error,
v.
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IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE UNITED STATES.

THE LAW ASSOCIATION
—OF—
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No. 202.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE UNITED STATES.

This case is here on error to the court of appeals of the District of Columbia, presenting for review a judgment of that court of February 16, 1894, affirming a judgment of the supreme court of the District of Columbia in an action of assumpsit on a count for money had and received by the defendant, E. H. Nebeker, for the use of the plaintiff, The Twin City National Bank of New Brighton.

THE CASE.

From the bill of exceptions (Rec., 8–48) it appears that the plaintiff, a national-banking association, had

filed in the office of the Comptroller of the Currency a certificate of liquidation of the plaintiff dated August 17, 1891, from which it appeared that the shareholders of the plaintiff had, on the 13th day of June, 1891, voted "that the plaintiff go into liquidation on June 23, 1891, and be closed;" that the plaintiff had, through its board of directors, made a power of attorney authorizing the Comptroller of the Currency to withdraw $12,500 of United States bonds deposited with the Treasurer of the United States by the plaintiff to secure circulation, and authorizing A. S. Pratt & Son, to sell, assign, and transfer the same, and appoint one or more attorneys for that purpose; that the plaintiff had made to the Treasurer of the United States the return required by law of the average amount of its notes in circulation for the period from June 1, 1891, to June 30, 1891, and also a like return from July 1 to August 25, 1891; that the aggregate duty on average amount of circulation, at one-half of 1 per cent for these two periods, was $73.08, which amount was paid by the agents of plaintiff under protest.

That Mr. Nebeker, the defendant, was at the times mentioned the Treasurer of the United States.

That the agents of plaintiff deposited for plaintiff in the Treasury of the United States moneys sufficient to retire the outstanding circulation of plaintiff, for the purpose of withdrawing the bonds of the plaintiff on deposit with the Treasurer. That demand was made on the Treasurer of the United States for the surrender of the bonds, which he refused to give up "unless the semi-annual return be made and a deposit be made of the amount required."

That the tax was then paid by the agent of plaintiff and a written protest filed by him with the Treasurer. (Rec., 12–13.)

That the amount paid by plaintiff, through its agent, under protest, "was covered into the Treasury and was applied to the payment of the semiannual duty or tax of the plaintiff." (Rec., 47.)

This action was brought by plaintiff against the defendant personally, to recover from him the amount of the duty or tax which the plaintiff had paid to him in his capacity as Treasurer of the United States.

ASSIGNMENT OF ERRORS (REC. 54).

First. That the court directed a verdict for the defendant in error.

Second. That the court admitted the testimony of the witness Rogers, that the money paid to the defendant in error was covered into the Treasury and was applied to the payment of the semiannual duty or tax of the plaintiff in error.

Third. That the court held that there was a statute of the United States which imposed a tax upon the circulating notes of the plaintiff in error.

Fourth. That the judgment of the supreme court of the District of Columbia, in favor of the defendant in error, was affirmed.

Fifth. That the said judgment of the supreme court of the District of Columbia was not reversed.

Sixth. That judgment was given for the defendant in error, whereas judgment should have been for the plaintiff in error and against the defendant in error.

If the object of these assignments was to direct attention to the specific grounds of the errors complained of, they wholly fail of their purpose.

That a judgment was not reversed, and that it was affirmed, and that it was given for the defendant in error, when it should have been given for the plaintiff in error, are not such specifications of error as a court of review can consider. (*Stevens* v. *Gladdin*, 19 How., 64.)

ARGUMENT.

I.

That the court directed a verdict for the defendant in error.

It is manifest from the bill of exceptions that there was no issue of fact involved in the case, but that it turned entirely upon questions of law and was, therefore, really for the determination of the court.

It was not denied that the plaintiff had paid the money, that he paid it under protest, that he paid it to the Treasurer of the United States, who exacted its payment under the requirement of a statute which was mandatory in its terms.

The contention of the plaintiff in error is that that statute was not lawfully enacted; that it was, in fact, a revenue bill, which had originated in the Senate and not in the House.

So it was for the court to say, on this state of the case, whether or not it was proper to leave it to the jury.

Robertson v. *Edelhoff* (132 U. S., 614).

Delaware, L. & W. R. Co. v. *Converse* (139 U. S., 469).

Goodlett v. *L. & N. R. Co.* (122 U. S., 39).
Elliott v. *Chi., M. & St. P. R. Co.* (150 U. S., 245).
Bunt v. *Sierra Butte Gold M. Co.* (138 U. S., 483).
L. & N. R. Co. v. *Woodson* (134 U. S., 621).

Whether an apparent act of the legislature is or is not a law is a judicial question to be determined by the court, and not a question of fact to be tried by a jury.

South Ottawa v. *Perkins* (94 U. S., 260).
Walnut v. *Wade* (103 U. S., 683).
Town of Ohio v. *Frank* (103 U. S., 697).

II.

The admission by the court of the testimony of Rogers that the money paid to the defendant was covered into the Treasury and was applied to the payment of a semiannual duty or tax of the plaintiff in error.

The plaintiff in error was suing the defendant for "money had and received."

It was relevant to the issue joined for the defendant to show that he had not received the money in his personal character, but had received it only as the Treasurer of the United States; that the plaintiff was indebted to the United States on account of a certain tax or duty which had already accrued and which the law made it the duty of the Treasurer to collect.

The testimony was competent, for he spoke of his own knowledge. (Rec., 47.)

He was superintendent of the National Bank Redemption Agency in the year 1891. (Rec., 10.)

So, we submit, the court did not err in admitting the testimony.

III.

That the court held that there was a statute of the United States which imposed a tax upon the circulating notes of the plaintiff in error.

I do not find from the record that any such question was expressly raised or passed upon by the trial court. It does appear from the bill of exceptions (Rec. 8) that the plaintiff, to maintain the issue on his part, did offer in evidence the published records of certain portions of the Journal of the House of Representatives and of the Senate of the United States for the purpose of showing that the national banking act of June 30, 1864, originated in a bill introduced in and passed by the House of Representatives, and that it received in the Senate the amendment which appears as section 5214, Revised Statutes, as follows:

> In lieu of all existing taxes, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum, each half year, upon the average amount of its notes in circulation; and a duty of one-quarter of one per centum, each half year, upon the average amount of its deposits; and a duty of one-quarter of one per centum, each half year, on the average amount of its capital stock, beyond the amount invested in United States bonds, for the six months next preceding the most recent first day of January or July.

Section 5217, Revised Statutes, provides that:

> Whenever an association fails to pay the duties imposed by the three preceding sections the sums

> due may be collected in the manner for the collection of United States taxes from other corporations; or the Treasurer may reserve the amount out of the interest as it may become due on the bonds deposited with him by such defaulting association.

Section 5218, Revised Statutes:

> In all cases where an association has paid, or may pay, in excess of what may be or has been found due from it on account of the duty required to be paid to the Treasurer of the United States, the association may state an account therefor, which, on being certified by the Treasurer of the United States, and found correct by the First Comptroller of the Treasury, shall be refunded in the ordinary manner, by warrant on the Treasury.

Section 5214, Revised Statutes, is the only section with which we are concerned in considering the question of the validity of so much of the act as imposes the duty on notes in circulation, deposits, and capital stock.

But it may be well, before passing to that, to inquire why and how the plaintiff can resort to the remedy he has employed here, when section 5218 affords a far easier, cheaper, and adequate one. If it has paid from any cause "on account of the duty required to be paid to the Treasurer of the United States" in excess of what was due from it, it should have had the fact certified by the Treasurer of the United States and laid before the First Comptroller of the Treasury, who was empowered to pass upon the claim; and if he found it to be correct, it would have been refunded to the plaintiff by warrant on the Treasury.

But is the claim of the plaintiff correct? Was this a revenue bill? And if it was, did it originate in the Senate? And is it competent for the court to look to the journals to ascertain these facts?

WAS IT A REVENUE BILL?

The title of the act (13 Stat., 99) was "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof."

Section, 41 (p. 111) provides:

> That the plates and special dies to be procured by the Comptroller of the Currency for the printing of such circulating notes, shall remain under his control and direction, and the expenses necessarily incurred in executing the provisions of this act respecting the procuring of such notes, and all other expenses of the Bureau, shall be paid out of the proceeds of the taxes, or duties, now or hereafter to be assessed on the circulation and collected from associations organized under this act. And in lieu of all existing taxes every association shall pay to the Treasurer of the United States, in the months of July and January, etc. (as section 5214, R. S.).

From which it is clear that the amendment imposed in the Senate was merely for the creation of a fund to pay for the printing of the circulating notes and the expenses necessarily incurred in executing the provisions of this act respecting the procuring of such notes and all other expenses of the Bureau.

It did not create any revenue for the United States—for the public generally—but only for the benefit of those

persons who might avail themselves of the provisions of the act and make investments of their money as a private enterprise in the capital stock of a national bank.

In *United States* v. *James* (13 Blatch., 207) the question presented was, whether a clause of the act of Congress of March 3, 1875 (18 Stat., 377), entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1876, and for other purposes," was constitutional. The clause referred to increased the rate of postage upon third-class matter from one cent for two ounces to one cent an ounce. The ground on which it was claimed that this clause was not constitutionally enacted was that the clause originated in the Senate and was not an amendment to a bill raising revenue originating in the House of Representatives.

Johnson, J., in denying this contention, said:

> Certain legislative measures are unmistakably bills for raising revenue. These impose taxes upon the people, either directly or indirectly, or lay duties, imposts, or excises for the use of the Government, and give to the persons from whom the money is exacted no equivalent in return, unless in the enjoyment, in common with the rest of the citizens, of the benefit of good government. It is this feature which characterizes bills for raising revenue. They draw money from the citizen; they give no direct equivalent in return. In respect to such bills it was reasonable that the immediate representatives of the taxpayers should alone have the power to originate them. Their immediate responsibility to their constituents and their jealous regard for the pecuniary interests of the people, it was supposed,

> would render them especially watchful in the protection of those whom they represented. But the reason fails in respect to bills of a different class. A bill regulating postal rates for postal service provides an equivalent for the money, which the citizen may choose voluntarily to pay. He gets the fixed service for the fixed rate or he lets it alone, as he pleases and as his own interests dictate. Revenue beyond its cost may or may not be derived from the service and the pay received for it, but it is only a very strained construction which would regard a bill establishing rates of postage as a bill for raising revenue within the meaning of the Constitution.
>
> This broad distinction existing in fact between the two kinds of bills, it is obviously a just construction to confine the terms of the Constitution to the case which they plainly designate. To strain those terms beyond their primary and obvious meaning and thus to introduce a precedent for that sort of construction would work a great public mischief. Mr. Justice Story, in his Commentaries on the Constitution (sec. 880), puts the same construction upon the language in question and gives his reasons for the views he sustains, which are able and convincing.

The reasoning of this opinion applies *a fortiori* to the case in hand.

Judge Story says:

> What bills are properly "bills for raising revenue" in the sense of the Constitution has been matter of some discussion. * * * The history of the origin of the power already suggested abundantly proves that it has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes which may incidentally create revenue. (Story on Constitution, 5th ed., sec. 880.)

DID IT ORIGINATE IN THE SENATE?

Section 7, article 1, Constitution of the United States, provides:

> All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

This bill did originate in the House of Representatives; but, it is insisted, that as it left the House it was not a revenue bill in any respect; that it became such only by the amendment attached to it in the Senate.

The act, as we have seen, was to provide a national currency, and for the circulation thereof. The scheme contrived involved national banks as the agencies, or instruments, through which the currency was to be circulated.

It was certainly no novel feature in governmental economy that the Department or bureau by which the function was to be exercised should be self-supporting, or as nearly so as practicable.

This, as we have seen, has been conspicuously true of the postal service. Stamps, money orders, registered letters—each of these convenient instrumentalities must be paid for by the person who would enjoy the convenience they afford. But the proceeds arising therefrom do not go into the public treasury of the United States to become the subject of general appropriations by Congress. They are applied specifically to the department by which they were produced.

If each national bank was not required to pay for the cost of printing its notes, while it was allowed to enjoy

all the benefit that resulted from their use, the injustice of such gross inequality would soon lead to a vigorous reform.

The Senate amendment, then, was strictly germane to the bill as it came from the House and altogether consonant with the objects proposed by the bill.

Mr. Justice Shepard has treated this branch of the case with such fullness as to render its further elaboration needless.

CAN THE JOURNALS OF CONGRESS BE RESORTED TO NOW TO ASCERTAIN THE ACTION TAKEN BY THE HOUSES OF CONGRESS AT THE DIFFERENT STAGES OF THE BILL?

The decisions of the supreme court of Illinois are frequently cited by text writers and in the opinion of judges as supporting this view, without regard to the fact that by express provision of the constitution of that State the journals of its general assembly are made the standard by which the validity of its legislative acts shall be determined. (*Post* v. *Supervisors*, 105 U. S., 668.)

But in *Field* v. *Clarke* (143 U. S., 649) this court, in an opinion delivered by Mr. Justice Harlan, in which the statutes and decisions of most of the States are reviewed and the question given great consideration, agreed:

> That upon grounds of public policy, as well as upon the ancient and well-settled rules of law, a copy of a bill, bearing the signatures of the presiding officers of the two houses of the legislature, and

> the approval of the governor, and found in the custody of the secretary of state, was conclusive proof of the enactment and contents of a statute, and could not be contradicted by the legislative journals or in any other mode.

And held (p. 680):

> For the reason stated that it is not competent for the appellants to show, from the Journals of either House, from the reports of committees, or from other documents printed by the authority of Congress, that the enrolled bill designated H. R. 9416, as finally passed, contained a section that does not appear in the enrolled act in the custody of the State Department.

And in *Harwood* v. *Wentworth* (162 U. S., 547), in which an act of the Territory of Arizona was challenged upon some ground affecting its validity, *Field* v. *Clarke*, was reexamined and affirmed. The court, speaking again through Mr. Justice Harlan, said:

> But it may be added that if the principle announced in *Field* v. *Clarke* involves any element of danger to the public it is competent for Congress to meet that danger by declaring under what circumstances or by what kind of evidence an enrolled act of Congress, or of a Territorial legislature, authenticated as required by law, and in the hands of the officer or department to whose custody it is committed by statute, may be shown not to be in the form which it was when passed by Congress or by the Territorial legislature.

If it is not competent to show by the Journals or files of Congress that material parts of a bill have been taken from or added to its body after its passage, and before

its engrossment, and that thereby the will and intent, not of one House only, but of both Houses of Congress, have been defeated, upon what ground can it be maintained that the Journals of one or both Houses may be resorted to as the final and infallible arbiter to determine precisely where and at what stage of its evolution a bill received an amendment.

And where shall scales of such nicety be found by which it may be ascertained with mathematical precision that what is called an amendment by the Senate, concurred in by the House, was anything more than a suggestion, made by members of the Senate, with such show of reason as to induce its adoption by the House as an offspring of its own?

Why should the journals, kept by a clerk, be allowed a sanctity exceeding that extended to the completed action of the Legislature, authenticated by the signatures of the presiding officers of both bodies?

IV.

THE DEFENDANT HERE CAN, IN NO VIEW OF THIS CASE, BE HELD PERSONALLY LIABLE.

The declaration (Rec., 1) does not appear to have been tried by a demurrer.

I feel warranted, however, in saying that I never saw another like it. It gives no names, dates, acts, or circumstances by which a promise was expressed, or from which one could be implied, or out of which a legal liability of the defendant to the plaintiff could be constructed. If it had simply averred "the defendant

owes the plaintiff $73.08," it would have set forth all that it now declares.

But the bill of exceptions shows all the facts that were before the jury. The certificate of liquidation of the plaintiff bank was dated August 17, 1891.

It is true the stockholders' meeting was on the 13th of June, 1891, at which they voted to "go into liquidation" on June 23, 1891, and be closed.

The plaintiff bank had made two returns, as required by law, "of the average amount of its notes in circulation"—one for the period from June 1, 1891, to June 30, 1891, the other from June 30, 1891, to the 22d day of August, 1891. That the total amount of the duty due by said bank from June 1, 1891, to August 22, 1891, was $73.08. That under the statute (sec. 5217, R. S.) the United States Treasurer had the right to deduct this amount from the accrued interest on the bonds deposited with him by the plaintiff to secure its circulation. That he refused to deliver these bonds to the plaintiff bank, or its agent, until this duty was paid.

That thereupon plaintiff bank, through its agent, paid it, making written protest at the time. That the money so received by the Treasurer of the United States "was covered into the Treasury and was applied to the payment of the semiannual duty or tax of the plaintiff."

So it seems that the defendant had really nothing to do with the case. It was the Treasurer of the United States who, pursuant to the requirement of the law, refused to surrender the bonds to plaintiff, on which the United States had a lien by statute to the amount of the

duty, until the duty was paid. The money was paid, not to the defendant, but to the Treasurer of the United States. And the plaintiff recognizes this in the two written notices "G" and "H." (Rec., 12–13.)

Mr. Pratt, the principal witness, says (Rec., 15):

> Q. After you had paid this money into the Treasury what did you do?
>
> A. I went to the Treasurer of the United States and showed him that I had made the deposit and demanded the surrender of the bonds. He declined to give them up.

It was not the case of an individual who, by virtue of official power, had obtained possession of the property of another, but it was the case of an officer of the Government, to whom the plaintiff went as such officer, and invoked the exercise of his official power, to surrender to him certain bonds that were in the United States Treasury. The officer found that under the very law, in virtue of which these bonds had been received into the Treasury, a lien securing the payment of a duty had been impressed upon them. He could not give the law operation to the extent of surrendering the bonds and restrain its operation as to the collection of the amount of the lien thereon. The law, under which he was acting, had been in constant operation and exercise for twenty-six years, without having its validity challenged or impeached.

An executive officer may, to be sure, make himself liable by the enforcement of an unconstitutional statute, but he must be a very bold officer who, when called upon

for probably the thousandth time in his official career to execute the provisions of the law, hesitates and falters because of the suggestion that perchance there may lie lurking in the body of the statute some hidden element of unconstitutionality.

We think this defendant has not, by his conduct, exposed himself to the liability which is here sought to be enforced against him.

HOLMES CONRAD,
Solicitor-General.

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